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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 226

RAUL ROGERIO GONZALEZ, BY HIS GUARDIAN AD LITEM, ~~ADELAIDA~~ GONZALEZ, PETITIONER,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

PETITION FOR CERTIORARI FILED JUNE 26, 1928

CERTIORARI GRANTED OCTOBER 15, 1928

(33,535)

(33,535)

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United States of America
Philippine Islands

In the Supreme Court of the Philippine Islands

G. R. No. 27619—Concerning Appointment of Chaplain and Accounting.

RAUL ROGERIO GONZALEZ, BY HIS GUARDIAN AD LITEM ADELAIDA GONZALEZ,
Petitioner,

VERSUS

THE ROMAN CATHOLIC ARCH-BISHOP OF MANILA,
Respondent.

(APPELLATE JURISDICTION)

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On August 5, 1924, there was filed in the Court of First Instance of Manila, 9th Judicial District, the following complaint:

(CAPTION AND TITLE OMITTED)

COMPLAINT

COMES NOW the plaintiff, by his guardian ad litem and undersigned attorneys, and for cause of action against the defendant alleges:

I.

That he is a minor residing in the municipality of Baliwag, province of Bulacan; that he will be 12 years of age on the 16th day of September, 1924; that Adelaida Gonzalez is his mother and duly appointed and authorized guardian ad litem for the purposes of this action; that the defendant is a corporation sole, domiciled in the City of Manila, P. I., and represented by His Grace, M. J. O'Dougherty, apostolic archbishop.

II.

That under and by virtue of the provisions of the last will and testament of Doña Petronila de Guzman, executed on the 13th day of March, 1816, a collative chaplaincy (capellania colativa) was founded in this archdiocese of Manila; that said chaplaincy had and has for its capital a lot or parcel of land and the building of strong materials constructed thereon, designated as numbers 210, 212 and 214 Calle Rosario, district of Binondo, Manila; that the foundation of said chaplaincy was duly approved by the proper ecclesiastical authorities, who agreed to all the conditions thereof. That a copy of that part of said last will and testament founding said chaplaincy marked Exhibit "A" for identification is hereto attached and made a part of this complaint.

III.

That said chaplaincy, founded, approved and accepted as aforesaid, entailed and still entails the

obligation on the part of the chaplain occupying the same, after being ordained as a priest, to celebrate sixty masses annually in the churches of Manila for the soul of the testatrix, Doña Petronila de Guzman, and those of her deceased father, mother, brothers and sisters, and also entailed and still entails the obligation on the part of the defendant to appoint and maintain with the income of said property an occupant of said chaplaincy and to maintain and educate the heir apparent to said chaplaincy pending his appointment, not only for the purpose of fulfilling said obligation to celebrate masses for the souls of the dead, but also to properly equip and prepare the heir apparent for the performance of his duties.

IV.

That it is provided in said will that said chaplaincy should be occupied by the nearest relative in succession of the first chaplain, Esteban de Guzman.

V.

That the last occupant of said chaplaincy was plaintiff's father, Angel Gonzalez, who was appointed by the defendant on June 20, 1901, and who resigned on September 22, 1909; that in view of said resignation the defendant declared the chaplaincy in question to be vacant on and after December 6, 1910, and since which time it has remained unoccupied.

VI.

That plaintiff is the eldest son of the said Angel and Adelaida Gonzalez, and as such the nearest relative in succession to the first chaplain, Esteban de Guzman, and the legitimate successor to said chaplaincy; that plaintiff possesses the necessary intelligence, aptitude and spiritual inclination for the career of priesthood, as shown by the testimonials of various Roman Catholic priests, who know the plaintiff and his family and which testimonials marked Exhibits B, C, D, and E for identification are hereto attached and made a part of this complaint; and that there is no other person who has or claims to have the right to said chaplaincy.

VII.

That in accordance with the will founding the chaplaincy in question and with the canon law governing chaplaincies, the defendant in its capacity as the administrator of the property of said chaplaincy accounted for, and delivered to the last chaplain, Angel Gonzalez, all of the net income of said property from the 17th of November, 1897, the date of the resignation of his predecessor, to the 20th of June, 1901, the date of his appointment as chaplain, as well as all the income thereof during the period of his incumbency; the defendant as such administrator, having effected with the said Angel Gonzalez a final settlement of the accounts of said chaplaincy up to December 31, 1910.

VIII.

That the only right, title or interest of the de-

fendant in or to said property, is as administrator for the incumbent of said chaplaincy when occupied or for the heir apparent thereto when vacant.

IX.

That subsequent to the settlement of accounts set forth in the seventh paragraph of this complaint, the defendant in the month of September, 1914, wrongfully obtained and caused to be registered in its own name in the registry of property of the city of Manila, a Torrens Title in fee simple to said property free and clear of the trust imposed upon it and upon the defendant as its administrator for the maintenance of said chaplaincy. That a description of the property as thus wrongfully registered marked Exhibit "F" is hereto attached and made a part of this complaint.

X.

That since said settlement of December 10, 1910, with plaintiff's father as the last chaplain, the defendant, in its capacity as such administrator, has been and still is collecting the rents of said property which as plaintiff is informed and believes and therefore alleges the fact to be, have amounted and still amount to approximately P20,000.00 per year.

XI.

That it is the duty of the defendant as such administrator to account to plaintiff for the amount of rents thus collected.

XII.

That plaintiff through his parents and attorneys has repeatedly made application to the defendant for appointment to said chaplaincy; that at first no objection was made to plaintiff's right to or fitness for said office, and defendant promised to appoint him, but later refused to do so alleging at first that he was too young and later declining to state its reasons for such refusal; that the language of the will establishing said chaplaincy, and particularly the eleventh paragraph thereof, expressly discloses the intention of the foundress to fill said chaplaincy with minors without limitation as to their youthfulness; that Esteban de Guzman, the first chaplain chosen by the foundress Petronila de Guzman was less than 14 years of age on the date of his appointment by the defendant Archbishop of Manila.

XIII.

That the plaintiff has no property except his right to the chaplaincy in question, and his parents have no means with which to maintain and educate him appropriately for the career of priesthood.

XIV.

That plaintiff is entitled to a reasonable allowance for his maintenance and education from the income of the chaplaincy pending his appointment as chaplain; and that considering the amount of said income, as alleged in paragraph ten of this complaint, the sum of ₱1,000.00 per month would

be a reasonable allowance.

XV.

That the defendant corporation unlawfully neglects the performance of an act which the law specially enjoins as a duty upon it as administrator of the property constituting the capital of said chaplaincy, to wit, the appointment of the plaintiff as the rightful successor to said chaplaincy and the payment to him of the income of said property since defendant's settlement with the last chaplain and the maintenance and education of plaintiff from said income pending such appointment; that the defendant corporation unlawfully excludes plaintiff from the use and enjoyment of a right and office to which he is entitled, to wit: the office of chaplain and the right to the use of the income from said chaplaincy and that there is no other plain, speedy and adequate remedy in the ordinary course of law.

WHEREFORE, plaintiff prays judgment:

(1) Declaring the plaintiff the rightful and lawful heir to said chaplaincy and to the income from the property constituting its capital; (2) Declaring the defendant the administrator of said chaplaincy and of its property for the use and benefit of the plaintiff and his successors as chaplain of said chaplaincy; (3) Definitely declaring and establishing the right of the plaintiff and of his successors under the terms of said will to be appointed to and receive the income of said chaplain-

cy at any time during their infancy when said chaplaincy may be vacant and that pending such appointment they shall be entitled to receive all the income of said property for their maintenance and education to the end that controversy be obviated as to the rights of the plaintiff and his successors as heirs of said chaplaincy and as to the duties of the defendant as administrator of said chaplaincy and of its property and to the end that the will of the foundress of said chaplaincy be carried out and that the masses therein provided may be said for the soul of said foundress and for those of her relatives therein specified; (4) Ordering the administrative or trust character of defendant's title to said property to be recorded in the registry of property of the City of Manila; (5) Granting a peremptory order against the defendant commanding it and His Grace, M. J. O'Doherty, Apostolic Archbishop, as its sole representative immediately after the receipt of such order to appoint the plaintiff as chaplain of said chaplaincy and to pay over to his guardian ad litem for his use and benefit, all the rents and income in the hands of the defendant as administrator of said property with an itemized accounting of the administration of said property; (6) That defendant be immediately ordered to show cause why it should not pay from the income of said property, ₱1,000.00 per month to the guardian ad litem of the plaintiff for the maintenance and legal expenses of the latter pending the trial and determination of this action; and (7)

That judgment be rendered against defendant for costs of suit and that plaintiff be granted such other and further relief as may be just and equitable.

Manila, P. I.
July 31, 1924.

GIBBS & McDONOUGH
By (Sgd.) A. D. GIBBS,
Attorneys for plaintiff,
301 Roxas Bldg., Manila.

On October 13, 1924, the defendant entity presented the following answer:

(CAPTION AND TITLE OMITTED)

ANSWER

The undersigned, in behalf of the defendant in the above entitled case, for answer to plaintiff's complaint deny each and every fact set forth therein, and as special defenses, allege:

I.

First Special Defense

That the chaplaincy in question was founded, according to the will of the testatrix set forth in her testament, as an ecclesiastical collative chaplaincy and was accepted as such by the church authorities, which, from the time of its constitution as an ecclesiastical chaplaincy, became subject to the laws of the Roman Catholic Apostolic Church or the Canon Law, and the properties left for its maintainance became spiritual properties or the exclusive property of the church by perpetual title, subject on-

ly to the charges imposed by the testatrix; that the appointment of the chaplain for said chaplaincy, as well as the determination of the qualifications of the candidate for said office, are governed and regulated by the ecclesiastical or Canon Law; that according to said Code, it lies within the sole and exclusive jurisdiction of the church authorities to solve the questions that arise or may arise in connection with said chaplaincy, and therefore this Hon. Court has no jurisdiction to take cognizance of the matter in litigation in this action.

II.

Second Special Defense

That the will of the foundress attached to the complaint as Exhibit "A", upon which the action or claim of the plaintiff is based, does not provide (as contended by the attorneys for the plaintiff) that it is the will of the testatrix that the successor or successors to the first chaplain, Esteban de Guzman, be elected only from among the nearest relatives, or has always to be a nearest relative, if any, of Esteban de Guzman, and therefore the plaintiff has no cause of action against the defendant to compel the latter to appoint him as chaplain of the chaplaincy in question.

III.

Third Special Defense

That in the tenth clause of said will or Exhibit "A" of the complaint it is stated that it is the will of the testatrix that her executors should ap-

point the father president or rector of the San Juan de Letran College as patron of the chaplaincy which is the subject-matter of this action, and said executors did so; that according to the plain and conclusive provisions of canon 1148 of the Canon Law, which, as alleged in the first special defense and is reiterated here, governs and regulates the matter, it is an essential and indispensable requisite in order that the bishop or the diocesan prelate may appoint a person chaplain of an ecclesiastical collative chaplaincy, such as the one in question, that the patron appointed by the will of the founder must be the one to choose and present such a person or candidate to the diocesan prelate for that purpose; that it is not alleged in the complaint that the patron of the chaplaincy in question appointed by the will of the testatrix has presented the plaintiff to the defendant in order that the latter should appoint him chaplain of said chaplaincy, and therefore the plaintiff does not allege in his complaint facts sufficient to constitute a cause of action.

IV.

Fourth Special Defense

That the Canon Law is the law applicable to the instant case, as regards the qualifications of the person that can be appointed chaplain of a chaplaincy and receive the ecclesiastical benefits and pensions appurtenant thereto, and, according to canon 118 of the Canon Law, one of the qualifications that a candidate or applicant must have in order

that he may be appointed chaplain of an ecclesiastical collative chaplaincy is that he be a clergyman, and, according to canon 936 of the same Code, nobody can enter the clergy or be a clergyman without having begun the course in theology, which presupposes the course in philosophy, and the latter, in turn, the completion of the subjects for the degree of Bachelor of Arts; that the plaintiff does not allege in his complaint that he is a clergyman or that he has the above mentioned qualifications, and therefore he has no right to the remedy he prays for or claims in his complaint.

V.

Fifth Special Defense

That under the elementary principles of ecclesiastical or canon law, His Holiness, the Pope, the highest pontiff of the Roman Catholic Apostolic Church, has ample power to authorize the use, for other similar pious purposes, of the ecclesiastical benefices or incomes of the chaplaincies, like the one in question, during the time that the offices of chaplain therein are vacant, and the defendant herein, with permission of His Holiness, has disposed of the incomes of said chaplaincy, during the time that the office of chaplain therein was vacant, using the same for pious purposes similar to those for which the testatrix has founded the chaplaincy.

WHEREFORE, the defendant prays that after the proper proceedings the complaint be dis-

missed with costs against the plaintiff.

Manila, P. I., October 13, 1924.

FERIA & LA O
By F. R. FERIA,
Attorneys for the defendant
China Bank Bldg., Manila.

On February 27, 1925, the defendant filed the following amended answer:

(CAPTION AND TITLE OMITTED)

AMENDED ANSWER

The undersigned, in behalf of the defendant in the above entitled case, with leave of this Hon. Court presents the following amended answer, denying each and every one of the facts set forth in said complaint, and alleging as special defenses:

I.

First Special Defense

That the chaplaincy in question was founded, according to the will of the testatrix set forth in her testament, as an ecclesiastical collative chaplaincy and was accepted as such by the church authorities; that from the time of its constitution as chaplaincy, the same became subject to the laws of the Roman Catholic Apostolic Church or the Canon Law, and the properties left for its maintainance became spiritual properties or the exclusive property of the Church by perpetual title, subject only to the charges imposed by the testatrix; that the appointment of a chaplain for said chaplaincy, as well as the determination of the qualifications of

the candidate for said office, are governed and regulated by the ecclesiastical or canon law; that according to said Code, it lies within the sole and exclusive jurisdiction of the church authorities to solve the questions that arise or may arise in connection with said chaplaincy, and therefore this Hon. Court has no jurisdiction to take cognizance of the matter in litigation in this case.

II.

Second Special Defense

That the will of the founder attached to the complaint as Exhibit "A", upon which the action or claim of the plaintiff is based, does not provide (as contended by the plaintiff's attorneys) that it is the will of the testatrix that the successor or successors to the first chaplain, Esteban de Guzman, be chosen solely from among the nearest relatives, or has to be always a nearest relative, if any, of Esteban de Guzman, and consequently the plaintiff has no cause of action against the defendant to compel the latter to appoint him chaplain of the chaplaincy in question.

III.

Third Special Defense

That in the tenth clause of said will or Exhibit "A" of the complaint, it is stated that it is the will of the testatrix that her executors should appoint the father president or rector of the San Juan de Letran College as patron of the chaplaincy which is the subject-matter of this action, and said exe-

cutors did so; that according to the plain and conclusive provisions of canon 1148 of the Canon Law, which, as alleged in the first special defense and is reiterated here, governs and regulates the matter, it is an essential and indispensable requisite in order that the bishop or diocesan prelate may appoint a person chaplain of an ecclesiastical collative chaplaincy, such as the one in question, that the patron appointed by the will of the foundress is the one to choose and present such person or candidate to the diocesan prelate for that purpose within the period of six months from the time that the chaplaincy has become vacant, and it is not alleged in the complaint that the patron of the chaplaincy in question appointed by the will of the testatrix has presented the plaintiff to the defendant within the said period, in order that the latter should appoint him chaplain of said chaplaincy, and therefore the plaintiff does not allege in his complaint facts sufficient to constitute a cause of action.

IV.

Fourth Special Defense

That the Canon Law is the law applicable to the instant case, as regards the qualifications that a person must have in order that he may be appointed chaplain of a chaplaincy and receive the ecclesiastical benefits and pensions appurtenant thereto, and under canon 118 of the Canon Law, one of the qualifications that the candidate or applicant

must have in order that he may be appointed chaplain of an ecclesiastical collative chaplaincy is that he must be over fourteen years old and be a clergyman, and according to canon 936 of the same Code nobody can enter the clergy or be a clergyman without having begun the course in theology, which presupposes the course in philosophy, and the latter, in turn, the completion of the subjects for the degree of Bachelor of Arts; that the plaintiff is not a clergyman or does not have the qualifications above mentioned, and the defendant has refused to appoint the plaintiff chaplain because he does not have the necessary qualifications.

V.

Fifth Special Defense

That according to elementary principles of ecclesiastical or canon law, the chaplain is entitled only to the benefits of a chaplaincy pertaining to the time in which he occupies the position, and the diocesan prelate, and in this case the defendant, has the right to authorize the use, for other similar pious purposes, of the ecclesiastical benefices or incomes of the chaplaincies, like the one in question, during the time that the offices of chaplain therein are vacant, and the defendant in this case has disposed of the incomes of said chaplaincy during the time in which the office of chaplain therein was vacant, using them for pious purposes similar to those for which the testatrix has founded the chaplaincy.

WHEREFORE, the defendant prays that af-

ter the proper proceedings, the complaint be dismissed with the costs against the plaintiff.

Manila, P. I., February 27, 1925.

FERIA & LA O
By F. R. FERIA
Attorneys for defendant.
China Bank Bldg., Manila.

The answer above mentioned was amended on February 5, 1926, by another of the following tenor:

(CAPTION AND TITLE OMITTED)

SECOND AMENDED ANSWER

The undersigned, in behalf of the defendant in the above entitled case, with leave of this Hon. Court presents the following amended answer, denying each and every one of the facts alleged in said complaint, and alleging as special defenses:

I.

First Special Defense

That the chaplaincy in question was founded, according to the will of the testatrix set forth in her testament, as an ecclesiastical collative chaplaincy and was accepted as such by the church authorities; that from the time that this ecclesiastical chaplaincy was constituted, it became subject to the laws of the Roman Catholic Apostolic Church or Canon Law, and the properties left for its maintainance became spiritual properties or the exclusive property of the Church by perpetual title, subject only to the charges imposed by the testatrix;

that the appointment of chaplain for said chaplaincy, as well as the determination of the qualifications that the candidate for said office must have, are governed and regulated by the ecclesiastical or Canon Law; that according to said Code, it lies within the sole and exclusive jurisdiction of the church authorities to solve the questions that arise or may arise in connection with said chaplaincy, and therefore this Hon. Court has no jurisdiction to take cognizance of the matter in litigation in this case.

II.

Second Special Defense

That the will of the foundress, attached to the complaint as Exhibit "A" upon which plaintiff's action or claim is based, does not provide (as contended by the plaintiff's attorneys) that it is the will of the testatrix that the successor or successors to the first chaplain, Esteban de Guzman, be selected solely from among the nearest relatives, or has to be always a nearest relative, if any, of Esteban de Guzman, and consequently the plaintiff has no cause of action against the defendant to compel the latter to appoint him chaplain of the chaplaincy in question.

III.

Third Special Defense

That in the tenth clause of said will or Exhibit "A" of the complaint, it is stated that it is the will of the testatrix that her executors should ap-

point the father president or rector of the San Juan de Letran College as patron of the chaplaincy, which is the subject-matter of this action, and said executors did so; that according to the plain and conclusive provisions of Canon 1148 of the Canon Law, which, as alleged in the first special defense and is reiterated here, governs and regulates the matter, it is an essential and indispensable requisite, in order that the bishop or diocesan prelate may appoint a person chaplain of an ecclesiastical collative chaplaincy, like the one in question, that the patron appointed by the will of the foundress be the one to select and present such person or candidate to the diocesan prelate for that purpose within the period of six months from the time that the chaplaincy has become vacant, and it is not alleged in the complaint that the patron of the chaplaincy in question appointed by the will of the testatrix has presented the plaintiff to the defendant within said period in order that the latter should appoint him chaplain of said chaplaincy, and therefore the plaintiff does not allege in his complaint facts sufficient to constitute a cause of action.

IV.

Fourth Special Defense

That the Canon Law is the law applicable to the instant case, as regards the qualifications that a person must have in order that he may be appointed chaplain of a chaplaincy and receive the ec-

clesiastical benefits and pensions appurtenant thereto, and according to canon 118 of the Canon Law, one of the qualifications that the candidate or applicant must have in order that he may be appointed chaplain of an ecclesiastical collative chaplaincy is that he must be over fourteen years of age and be a clergyman, and according to canon 936 of the same Code, nobody can enter the clergy or be a clergyman without having already begun the course in theology, which presupposes the course in philosophy, and the latter, in turn, the completion of the subjects for the degree of Bachelor of Arts; that the plaintiff is not a clergyman or does not have the qualifications above mentioned; and the defendant has refused to appoint him chaplain, as he does not have the necessary qualifications.

V.

Fifth Special Defense

That under the elementary principles of the ecclesiastical or Canon Law, the chaplain is entitled only to the benefits of a chaplaincy pertaining to the time in which he occupies the position, and the diocesan prelate (and in this case the defendant) has the power to authorize the use, for other similar pious purposes, of the ecclesiastical benefices or incomes of the chaplaincies, like the one in question, during the time that the offices of chaplain therein are vacant, and the defendant in this case, following the custom established in this archdiocese concerning the use of the benefices of vacant chap-

lains, has disposed of the incomes of said chaplaincy during all the time in which the office of chaplain therein was vacant, using the same for pious purposes similar to those for which the testatrix has founded the chaplaincy.

VI.

Sixth Special Defense

That the defendant, in view of the fact that the plaintiff does not have the qualifications required by the Canon Law in order that he may be appointed chaplain, has, before the filing of this complaint, informed and promised the plaintiff or his parents that he was willing to defray the expenses of his studies and other necessary expenses of the plaintiff in a college or seminary until he shall be ordained and be in a position to be appointed chaplain of the chaplaincy in question, but the plaintiff, or his parents, has not accepted it and later has filed the herein complaint.

WHEREFORE, the defendant prays that after the proper proceedings, the complaint be dismissed with costs against the plaintiff.

Manila, P. I., February 5, 1926.

FERIA & LA O
By (Sgd). F. R. FERIA
Attorneys for defendant
China Bank Bldg., Manila.

Under date of March 2, 1926, the plaintiff filed the following amendment to his complaint:

(CAPTION AND TITLE OMITTED)

AMENDMENT TO COMPLAINT

COMES NOW the plaintiff by his guardian ad litem and undersigned attorneys and for the purpose of replying to the allegations of the defendant's second amended answer, by leave of Court first obtained, presents the following amendment to his complaint:

That the defendant, as disclosed by its second amended answer, has been incapacitated and disqualified to act as Administrator of the property belonging to the chaplaincy, (first) by alleged canon laws, edicts or regulations issued and promulgated by the Roman Catholic Church long subsequent to the making of the will by which the chaplaincy in question was founded, and which alleged cannon laws, edicts or regulations are incompatible with the fulfillment of the conditions of said will, and (second) because the defendant in alleged compliance with such canon laws, edicts or regulations and in violation of the will of the foundress of said chaplaincy, has appropriated the rents of the property belonging to said chaplaincy to uses other than those provided in said will, to the detriment of the souls of the deceased members of the family of the said foundress who are the beneficiaries of the masses provided for in said will and likewise to the damage of the plaintiff and his successors in interest as descendants of the said foundress and as heirs to said chaplaincy and to the rents of said property.

WHEREFORE, in addition to the relief prayed for in his original complaint, plaintiff asks that the defendant be removed as Administrator of the property of said chaplaincy and that plaintiff's mother and guardian ad litem, Adelaida Gonzalez, or some other suitable person be appointed to administer the said property in accordance with the will, and that such appointment take effect and be in force from the date of the decision of this Honorable Court.

Manila, P. I.
March 2, 1926.

GIBBS & McDONOUGH
By (Sgd.) A. D. GIBBS,
Attorneys for the Plaintiff,
302 Roxas Bldg., Manila.

Under date of April 5, 1926, the plaintiff filed another amended complaint of the following tenor:

(CAPTION AND TITLE OMITTED)

AMENDED COMPLAINT

COMES NOW the plaintiff by his guardian ad litem and undersigned attorneys and by leave of Court first obtained, amends his complaint and for cause of action against the defendant alleges:

I.

That he is a minor residing in the municipality of Baliwag, province of Bulacan; that he will be 14 years of age on the 16th day of September of the present year (1926); that Adelaida Gonzalez is his

mother and duly appointed and authorized guardian ad litem for the purposes of this action and that the defendant is a corporation sole, domiciled in the City of Manila, P. I., and represented by His Grace, M. J. O'Douherty, apostolic archbishop.

II.

That under and by virtue of the provisions of the last will and testament of Doña Petronila de Guzman, executed on the 13th of March, 1816, a collative chaplaincy (capellania colativa) was founded in this archdiocese of Manila; that said chaplaincy had and has for its capital a lot or parcel of land and the building of strong materials constructed thereon designated as numbers 210, 212 and 214 Calle Rosario, district of Binondo, Manila; that the foundation of said chaplaincy was duly approved and accepted by the proper ecclesiastical authorities, who agreed to all the conditions thereof. That a copy of that part of said last will and testament founding said chaplaincy marked Exhibit "A" for identification is hereto attached and made a part of this amended complaint.

III.

That said chaplaincy, founded, approved, and accepted as aforesaid, entailed and still entails the obligation on the part of the chaplain occupying the same after being ordained as a priest, to celebrate sixty masses annually in the churches of Manila for the soul of the testatrix, Doña Petronila de Guzman, and those of her deceased father, mo-

ther, brothers and sisters, and also entailed and still entails the obligation on the part of the defendant to appoint and maintain with the income of said property an occupant of said chaplaincy and to maintain and educate the heir apparent to said chaplaincy pending his appointment, not only for the purpose of fulfilling said obligation to celebrate masses for the souls of the dead, but also to properly equip and prepare the heir apparent for the performance of his duties.

IV.

That it is provided in the said will that said chaplaincy should be occupied by the nearest relative in succession of the first chaplain, Esteban de Guzman.

V.

That the last occupant of said chaplaincy was plaintiff's father, Angel Gonzalez, who was appointed by the defendant on June 20, 1901, and who resigned on September 22, 1909; that in view of said resignation the defendant declared the chaplaincy in question to be vacant on and after December 6, 1910, and since which time it has remained unoccupied.

VI.

That plaintiff is the eldest son of the said Angel and Adelaida Gonzalez, and as such, the nearest relative in succession to the first chaplain, Esteban de Guzman, and the legitimate successor to

said chaplaincy; that plaintiff possesses the necessary intelligence, aptitude and spiritual inclination for the career of priesthood; that the testimonials of various Roman Catholic priests as to plaintiff's aptitude and inclination for the priesthood marked Exhibits "B", "C", "D" and "E" for identification are hereto attached and made a part to this amended complaint, and that there is no other person who has or claims to have the right to said chaplaincy.

VII.

That in accordance with the will founding the chaplaincy in question and with the cannon law governing chaplaincies at the time of the approval and acceptance by the ecclesiastical authorities of the conditions under which said chaplaincy was founded, the defendant in its capacity as the administrator of the property of said chaplaincy accounted for, and delivered to the last chaplain, Angel Gonzalez, all of the net income of said property from the 17th of November, 1897, the date of the resignation of his predecessor, to the 20th of June, 1901, the date of his appointment as chaplain, as well as all the income thereof during the period of his incumbency; the defendant as such administrator, having effected with the said Angel Gonzalez a final settlement of the accounts of said chaplaincy up to December 31, 1910.

VIII.

That the only right, title or interest of the defendant in or to said property, is as administrator

for the incumbent of said chaplaincy when occupied or for the heir apparent thereto when vacant, and which administration defendant arrogated to itself in the year 1863, without any authority therefor in the will of the foundress.

IX.

That subsequent to the settlement of accounts set forth in the seventh paragraph of this amended complaint, the defendant in the month of September, 1914, wrongfully obtained and caused to be registered in its own name in the registry of property of the City of Manila, a Torrens title in fee simple to said property free and clear of the trust imposed upon it and upon the defendant as its administrator for the maintenance of said chaplaincy. That a description of the property as thus wrongfully registered marked Exhibit "F" is hereto attached and made a part of this amended complaint.

X.

That since said settlement of December 10, 1910, with plaintiff's father as the last chaplain, the defendant, in its capacity as such administrator, has been and still is collecting the rents of said property which as plaintiff is informed and believes and therefore alleges the fact to be have amounted and still amount to approximately ₱12,000.00 per year. That defendant has wrongfully and unlawfully used the rents thus collected by it as administrator for purposes foreign to those stipulated in the foundation of said chaplaincy and through the

misguided zeal of its agents has falsified its books of administration so as to conceal the income of said property and particularly over twenty thousand pesos of fire insurance collected by it in the year 1912 on account of the destruction by fire of the buildings of the chaplaincy.

XI.

That it is the duty of the defendant as such administrator to account to plaintiff for the amount of rents and fire insurance thus collected.

XII.

That the plaintiff through his parents and attorneys has repeatedly made application to the defendant for appointment to said chaplaincy; that at first no objection was made to plaintiff's right to or fitness for said office, and defendant promised to appoint him, but later refused to do so, alleging at first that he was too young and later declining to state its reasons for such refusal; that the language of the will establishing said chaplaincy, and particularly the eleventh paragraph thereof, expressly discloses the intention of the foundress to fill said chaplaincy with minors without limitation as to their youthfulness; that Esteban de Guzman, the first chaplain chosen by the foundress Petronila de Guzman, was less than 14 years of age on the date of his appointment by the defendant Archbisop of Manila.

XIII.

That the plaintiff has no property except his

right to the chaplaincy in question, and his parents have no means with which to maintain and educate him appropriately for the career of priesthood.

XIV.

That plaintiff is entitled to a reasonable allowance for his maintainance and education from the income of the chaplaincy pending his appointment as chaplain; and that considering the amount of said income, as alleged in paragraph ten of this complaint, and the large sums which the defendant should have on hand, the sum of ₱1,000.00 per month would be a reasonable allowance.

XV.

That the defendant corporation unlawfully neglects the performance of an act which the law specially enjoins as a duty upon it as the ecclesiastical appointive power and as administrator of the property constituting the capital of said chaplaincy, to-wit, the appointment of the plaintiff as the rightful successor of said chaplaincy and the payment to him of the income of said property since defendant's settlement with the last chaplain and the maintenance and education of plaintiff from said income pending such appointment; that the defendant corporation unlawfully excludes plaintiff from the use and enjoyment of a right and office to which he is entitled, to-wit: the office of chaplain and the right to the use of the income from said chaplaincy, and that there is no other plain, speedy and adequate remedy in the ordinary course of law.

WHEREFORE, plaintiff prays judgment:

(1) Declaring the plaintiff the rightful and lawful heir to said chaplaincy and to the income from the property constituting its capital; (2) Definitely declaring and establishing the right of the plaintiff and his successors under the terms of said will to be appointed to and receive the income of said chaplaincy at any time during their infancy when said chaplaincy may be vacant and that pending such appointment they shall be entitled to receive for their maintenance and education all the income of said property except a reasonable sum, not to exceed ₱300.00 per year, for the saying by other priests of sixty masses provided for in the will of the foundress to the end that controversy be obviated as to the rights of the plaintiff and his successors as heirs of said chaplaincy and as to the duties of the defendant as administrator of the said chaplaincy and of its property and to the end that the will of the foundress of said chaplaincy be carried out and that the masses therein provided for may be said for the soul of said foundress and for those of her relatives therein specified; (3) Declaring the administrative or trust character of defendant's title to said property and ordering that it be so recorded in the registry of property of the City of Manila; (4) Granting a peremptory order against the defendant commanding it and His Grace, M. J. O'Dougherty, Apostolic Archbishop, as its sole representative immediately after the re-

ceipt of such order to appoint the plaintiff as chaplain of said chaplaincy and to pay over to his guardian ad litem for his use and benefit, all the rents and income in the hands of the defendant as administrator of said property with an itemized accounting of the administration of said property; (5) That defendant be immediately ordered to show cause why it should not pay ₱1,000.00 per month to the guardian ad litem of the plaintiff for the maintenance and legal expenses of the latter pending the trial and determination of this action; (6) In the event the Court finds that defendant has been disqualified to administer the property belonging to the chaplaincy in accordance with the terms of the foundation thereof, by alleged canon laws, edicts or regulations issued and promulgated by the Roman Catholic Church subsequent to such foundation, then plaintiff prays that the defendant be removed as administrator of the property of said chaplaincy and that his mother and guardian ad litem, Adelaida Gonzalez, or some other suitable person be appointed to administer the property during the minority of the plaintiff in accordance with the will subject only to the obligation to pay over to the defendant or to some priest designated by it, a reasonable sum, not to exceed ₱300.-00 per year, for the saying of the masses provided for in the will of the foundress, and that such appointment take effect and be in force from the date of the decision of this Hon. Court; and (7) Plaintiff further prays that judgment be rendered

against defendant for the total income of said property from the 31st of December, 1910 less necessary expenses of the administration and for costs of suit and that the plaintiff be granted such other and further relief as may be just and equitable and as may finally determine the rights and duties of the plaintiff and his successors in interest and of the defendant in relation to said chaplaincy.

Manila, P. I.,

April 5, 1926.

GIBBS & McDONOUGH
By (Sgd.) A. D. GIBBS,
Attorneys for Plaintiff,
302 Roxas Bldg., Manila.

Under date of March 11, 1925, the parties entered into the following agreed statement of facts:

(CAPTION AND TITLE OMITTED)

STIPULATION OF FACTS

The parties to the above entitled action, by their respective undersigned attorneys, hereby stipulate the following facts:

1. That on the 13th day of March, 1816, Dña. Petronila de Guzman executed her last Will and Testament, the pertinent part of which reads as follows:

> "In this Town of Binondo this thirteenth day of March, one thousand eight hundred and sixteen, A. D., I, Da. Petronila de Guzman, a resident of this said town, finding myself sane and *fearful of*

death due to my advanced age, believing as I truly do in the Supreme Mystery of the Holy Trinity, Father, Son and the Holy Ghost, three distinct persons and only one true God, and in all others that I believe are preached and taught by our Holy Mother, the Roman Catholic Apostolic Church, under whose faith and belief I have lived and profess to live and die as a Catholic and a faithful devotee, and I invoke for my intercessor the Queen of the Angels the Most Holy Mary Mother of God and Our Lady, My Holy Guardian Angel, the saint of my namesake and of other saints of my devotion that they intercede with the Lord for the forgiveness of my sins and present my soul to eternal glory when I leave this world. Wherefore, and for the legal effects hereof, I sign this my will and testament, as follows:

"Ninth Item:—I declare and charge that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister, Da. Vicenta de Guzman, we have constructed with our own money, the expenses of which amount to one thousand six hundred pesos without including the value of the lot on which it is erected and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson, Dn. Jose Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian (colegial) of San Juan de Letran, who should be an orphan *mestizo*, native of this said town, and I request the Father chaplain to celebrate sixty masses annually, which should be said in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in behalf of the souls of my father, Dn. Tomas de Guzman, and of my mother, Dña. Sebas-

tiana de Jesus, and my brothers and sisters, and for me, the testatrix after my days.

"Tenth Item:—It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.

"Eleventh Item:—I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain."

"Eighteenth Item:—I revoke and annul all the wills and powers to make will and other testamentary dispositions that before this date I may have made and executed before any clerk of court in order that they should not be given any effect nor faith in any action or extrajudicially, except this will and testament whose clauses it is my will that they be kept, complied with and performed and in testimony hereof I sign.

PETRONILA DE GUZMAN"

2. That in accordance with said Will, a collative chaplaincy (capellania colativa) was founded in this archdiocese of Manila under the terms and conditions stated in the document, a true copy of which is attached hereto as Exhibit "A", and made a part hereof.

3. That the property referred to in said Will, as well as in said Exhibit "A" as the capital of said chaplaincy, consists at the present time of the lot and building designated as Nos. 210, 212 and 214 Calle Rosario, Manila.

4. That the first chaplain or benificiary of the chaplaincy in question was Esteban de Guzman, son of Jose Telesforo de Guzman; that the said Es-

teban de Guzman was born on August 4, 1806, and was formally appointed chaplain by the ecclesiastical authorities on June 16, 1820.

5. That the second chaplain or beneficiary appointed by the Archbishop of Manila to the chaplaincy in question was Vicente de Guzman, son also of Jose Telesforo de Guzman and a brother of the first chaplain Esteban de Guzman; that the said Vicente de Guzman was born on November 22, 1816 and was appointed chaplain on April 7, 1838.

6. That the third chaplain or beneficiary of the chaplaincy in question was Mariano de Guzman, son of Juan Bautista de Guzman, and grandson of Jose Telesforo de Guzman. He was born on January 20, 1845, and appointed chaplain on October 11, 1867.

7. That the fourth chaplain or beneficiary of the chaplaincy in question was Fernando Maniquis, son of Regina de Guzman, and grandson of Tomasa de Guzman, who was a sister of the first chaplain Esteban de Guzman. He was born on May 30, 1870, and appointed chaplain on May 23, 1890, and resigned on November 17, 1897.

8. That the fifth chaplain or beneficiary of the chaplaincy in question was Angel Gonzales, son of Escolastica de Guzman, and grandson of Tomasa de Guzman, sister of the first chaplain Esteban de Guzman. He was born on August 18, 1882, was appointed chaplain on June 20, 1901, and resigned as such effective December 6, 1910. Since his resig-

nation, the chaplaincy in question has remained vacant up to this date.

9. That according to the new canon law promulgated in the year 1918, "las capellanias o beneficios simples se confieren a clerigos del clero secular"; that in order to be a "clerigo" one must have "prima tonsura"; that in order to have "prima tonsura" one must have begun the study of theology; and that in order to study theology one must be a "bachiller".

10. That none of the five chaplains above mentioned was a "clerigo" at the time of his appointment as such to the chaplaincy in question.

11. That according to the record of the "Administracion de Obras Pias de la Sagrada Mitra", Angel Gonzalez, the fifth chaplain or beneficiary above mentioned, received the income from the property of the capellania in question during the period from November 17, 1897, to June 20, 1901, as well as the income from said property during his incumbency in office as chaplain, that is to say, from June 20, 1901, to December 31, 1910.

12. That the allegations of paragraph I of the complaint are true.

13. That the plaintiff, Raul Rogerio Gonzalez, is the legitimate son of said Angel Gonzalez and Adelaida Gonzalez, and was born on September 16, 1912.

14. That on Febuary 25, 1922, the Rector

of the San Juan de Letran College sent to the defendant a letter, a true copy of which is hereto attached, marked Exhibit "B", and made a part hereof.

15. That on March 20, 1922, the defendant, in reply to a verbal petition made by Angel Gonzalez, father of the plaintiff, wrote to him the letter which is hereto attached, marked Exhibit "C", and made a part hereof, and the defendant refused to appoint the plaintiff as chaplain of the chaplaincy in question for the reasons set forth in said letter.

16. That the said canon law mentioned in paragraph 9 hereof provides also as follows:

"Caput 11 de subiecto sacrae ordinationis.

Can. 968.

Sacram ordinationem valide recipit solus vir baptizatus; licite licito autem, qui ad norman sacrorum canonum debitis qualitatibus, indicio proprii Ordinarii, praeditus sit, neque ulla detineatur irregularitate aliove impedimento.

2.o Qui irregularitate alievo impedimento detinentur, licet post ordinationem etiam sine propria cumpa exerto, prohibentur receptos ordinos ordines exercere.

Can. 1457.

Praesentatio, nullo iusto obstante impedimento, sive agatur de patronatu laicáli sive de ecclesiastico et mixto, fieri debet, nisi brevius tempus lege fundationis vel legitima consuetudine praescriptum fuerit, saltem intra quatuor menses a die quo is, cui ius est instituendi, patronum certiorem fecerit de vacátione beneficii et de sacerdotibus qui in concursu fuerunt probati, si agatur de beneficio quod

per concurum conferri debet.

Can. 1464.

1.o Praesentatio fieri debet loci Ordinario, ciuis est indicare utrum idonea sit persona praesentata.

2.o Ordinarius ad snum formandum iudicium, debet ad norman can. 149 de persona praesentata diligenter inquirere et oportunas noticias, etiam secretas, si opus fuerit, assumere.

3.o Ordinarius non cogitur patrono patefacere rationes cur personam praesentatam admittere non possit."

Can. 1354.

1. Unaquaeque dioecesis in loco conveniente ab Episcopo electo Seminarium seu collegium habeat in quo, pro modo facultatum et dioecesis amplitudine, certus adolescentium numerus ad statum clericalem instituatur.

2. Curandum ut in maioribus praesertim dioecesibus bina constituantur Seminaria: minus, scilicet, pro pueris litterarum scientia imbuendis, maius pro alumnis philosophiae ac theologiae vacantibus.

3. Si constitui Seminarium diocesanum nequeat, aut in constituto Seminario conveniens institutio, praesertim in phillosophicis ac theologicis disciplinis, desideretur, Episcopus alumnos in alienum Seminarium mittat, nisi Seminarium interdioecesanum vel regionale, auctoritate apostolica, constitutum fuerit.

Can. 1364. In inferioribus Seminarii scholis:

1.o Praecipuum locum obtineat religionis disciplina, quae, modo singulorum ingenio et aetati accommodato, diligentissime explicetur;

2.o Linguas praesertim latinam et patriam alumni accurate addiscant;

3.o Ea in ceteris disciplinis institutio tradatur quae conveniat communi omnium culturae et statui clericorum in regione ubi alumni sacrum mi-

nisterium exercere debent.

Can. 1365.

1. In philososophiam rationalem cum affinibus disciplinis alumni per integrum saltem biennium incumbant.

2. Cursus theologicus saltem integro quadrienio contineatur, et praeter theologiam dogmaticam et moralem, complicti praesertim debet studium sacrae, Scripturae, historiae ecclesiasticae, iuris canonici, liturgiae, sacre eloquentiae et cantus eclesiastice.

3. Habeantur etiam lectiones de theologia pastorali, additis practicis exercitationibus praesertim de ratione tradendi pueris allisve catechismum, audiendi confessiones, visitandi infirmos, assistendi moribundis.

Can. 1448.

Ius patronatus est summa privilegiorum, cum quibusdam oneribus, quae ex Ecclesiae consessione competunt fundatoribus catholicis ecclesiae, capellae aut beneficii, vel etiam eis qui ab illis causam habent.

Can. 1455. Priviligia patronorum sunt:

1.o Praesentandi clericum ad ecclesiam vacantem vel beneficium vacans;

2.o Salva exsecutione onerum et honesta beneficiarii sustentatione, alimenta ex aequitate obtinendi ex ecclesiae vel beneficii reditibus, si qui supersint, quoties patronus ad inopiam nulla sua culpa redactus fuerit, etiamsi ipse iuri patronatus renuntiaverit in commudum Ecclesiae, vel pensio in limine fundationis ipsi patrono fuerit reservata, quae ad sublevandam eius inopiam non sufficiat;

3.o Habendi, si ita ferant legetimae locorum consuetudines, in sui patronatus ecclesia stemma gentis vel familliae, praecedentiam ante esteros laicos in procesionibus vel similibus functionibus, digniorem se dem in ecclesia, sed extra presbyte-

rium et sine baldachino.

Can. 1465.

1. Si praesentantus non idoneus fuerit reportus, patronus, dummodo tempus utile ad praesentadum sua negligentia lapsum ne sit, potest alium intra tempus de que in can. 1457 praesentare; sed si ne hic quidem idoneus repertus fuerit, ecclesia vel beneficium pro co casu fit librae colationis, nisi patronus vel praesentatus intra decem dies a significatione recusationis recursum a iudicio Ordinari ad Sedem Aposticam interposuerit; que pendente suspendatur, collatio usque ad finem controversiae et interim, si opus sit, oeconomum ecclesiae vel beneficio vacanti Ordenarius praeficiat.

2. Praesentatio labe simoniaca infecta, est ipso iure irrita, et etiam institutionem forte subsecutam irritam reddit.

Can. 1481.

Deductis cuiuslibet generis expensis et salvo praescripto can. 472, n, I, fructus beneficii vacantis pro altera dimidia parte accrescunt doti beneficii vel massae communi, pro altera cedunt fabricae ecclesiae seu sacrario, salva legitima consuetudino qua fructus omnes in bonus commune dioeceseos eragentur.

Can. 1458.

1. Si intra praescriptum tempus praesentatio facta non fuerit, ecclesia vel beneficium pro eo caso fit liberae collationis.

2. Si vero lis, quae intra utile tempus dirimi nequaet, exoriatur sive cirea ius praesentandi inter Ordinarium et patronum vel inter ipsos patrones, sive cirea ius praelationis inter ipsos praesentatos, suspendatur collatio usque adfinem controversiae, et interim, si opus sit, occononum eclesiae, vel beneficio vacanti ordinarius praeficiat.

Can. 1466.

1. Legitime praesentatus, et idoneus repertus,

acceptata praesentatione, ius habet ad canonicam institutionem.

2. Ius concedendi canonicam institutionem proprium est Ordinarii loci, non autem Vicarii Generalis sine mandato speciali.

3. Si plures et omnes idonei praesentati sint. Ordinarius eligit quem magis idoneum in Domino iudicaverit.

Can. 1560.

Forum necesarium habent:

1.o Actiones de spolio, coram Ordinario loci rei sitae;

2.o Causae respicientes beneficium, quamvis non residentiale, coram Ordinario loci beneficit;

3.o Causae quae versantur circa administrationem, coram Ordenario loci ubi administratio gesta est;

4.o Cáuse, quáe respiciunt hereditates áunt legata pia, coram Ordinario loci domicilii testatores, nisi agatur de mera exsecutione legati, quae vidanda est secundum ordinarias competentiae normas.

The parties reserve the right to introduce such further evidence during the trial as they may see fit.

Manila, P. I., March 11, 1925.

FERIA & LA O
By F. R. FERIA,
Attorneys for Defendant,
China Bank Bldg.,
Manila.

GIBBS & McDONOUGH
By A. D. GIBBS
Attorneys for Plaintiff,
302 Roxas Bldg., Manila.

EXHIBIT "A" STIPULATION OF FACTS

THE MAYOR CLERK OF COURT— PETRONILA DE GUZMAN— CAPITAL 1,700 PESOS VALUE OF HOUSE— CHARGE OF MASSES—60 ANNUAL—PATRON PRESIDENT SAN JUAN DE LETRAN—CHAPLAINS THE RELATIVES. CHAPLAINCY FOUNDED BY MRS. PETRONILA DE GUZMAN UPON A HOUSE OF STONE AND MORTAR SITUATED IN THE TOWN OF BINONDO, IN FAVOR OF

Mr. Jose Telesforo de Guzman, testamentary executor of the deceased Mrs. Petronila de Guzman, respectfully represents to your Honor: That desiring to comply with the last will of said testatrix as to the chaplaincy instituted in favor of my son, Mr. Esteban de Guzman, I now come to you requesting that the Clerk of the Court be ordered to give me testimonial of the beginning and of her will which I duly attach hereto with clauses 9, 10, 11, as well as commission for the office given me as executor. I, the administrator of my said son in said chaplaincy ask that everything done be delivered to me and to that end I request your Honor to order as I have prayed for I swear in the manner etc.—Jose Telesforo de Guzman.

The prayer was granted and the order issued and signed by the Mayor Judge of Binondo on the 29th of February, 1820, which I hereby certify Yrastorsa—Francisco de Reyes in the City of Ma-

HER RELATIVES AND IN DEFAULT OF THE LATTER, OF STUDENTS OF SAN JUAN DE LETRAN, MESTIZOS, ORPHANS AND NATIVES OF SAID TOWN.

nila, said days, month and year. Mr. Jose Telesforo de Guzman was notified, which fact I certify —Francisco Castro de Reyes in this Town of Binondo this thirteenth day of March, one thousand eight hundred and sixteen. A. D., I, Da. Petronila de Guzman, a resident of this said town, finding myself sane and fearful of death due to my advanced age, believing as I truly do in the Supreme Mystery of the Holy Trinity, Father, Son and the Holy Ghost, three distinct persons and only one true God, and in all others that I believe are preached and taught by our Holy Mother, the Roman Catholic Apostolic Church, under whose faith and belief I have lived and profess to live and die as a Catholic and a faithful devotee, and I invoke for my intercessor the Queen of the Angels the Most Holy Mary Mother of God and Our Lady, My Holy Guardian Angel, the saint of my namesake and of other saints of my devotion that they intercede with the Lord for the forgiveness of my sins and present my soul to eternal glory when I leave this world. Wherefore, and

DEED OF FOUNDATION

for the legal effects hereof, I sign this my will and testament, as

CLAUSE 9

follows: Ninth Item:—I declare and charge that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister, Da. Vicenta de Guzman, we have constructed with our own money, the expenses of which amount to one thousand six hundred pesos without including the value of the lot on which it is erected, and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson, Dn. Jose Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian (colegial) of San Juan de Letran, who should be an orphan mestizo, native of this said town, and I request the Father chaplain to celebrate sixty masses annually, which should be said in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in be-

CHAPLAIN—

60 MASSES—

half of the souls of my father, Dn. Tomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and my brothers and sister, and for me, the testatrix, after my days. Tenth Item:—It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran. Eleventh Item:—I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain—Eighteenth Item:—I revoke and annul all the wills and powers to make will and other testamentary dispositions that before this date I may have made and executed before any clerk of court in order that they should not be given any effect nor faith in any action or extrajudicially, except this will and testament whose clauses it is my will that they be kept, complied with and performed and in testimony thereof I sign—Petronila de Guzman. On Calle Rosario of the town of Binondo this 25th of January, 1820. Mr. Jose Nicolas Yraztorza, ordinary mayor of second election, Mr. Jose Telesforo de Guzman, executor of the de-

CLAUSE 10 PATRON THE FATHER PRESIDENT OF LETRAN

Do. 11

Do. 18

ceased, Mrs. Petronila de Guzman, having appeared, swore him before me, the present Clerk of Court, which he did in due form and in accordance with law and he promised to perform the duties of said office as executor faithfully and lawfully, and to manage the property of said deceased well and uprightly and to perform his duties exactly, trying to accomplish all the good and increase of said property and to render account in due time of his management and administration. And to the absolution from said oath he said—So I accept, swear and promise. Wherefore said Hon. Judge in the name of Royal Justice which he administers commissioned said executor to discharge his duties as such, taking all the proceedings and judicial actions that lead to the compliance therewith. To that end his Honor exercised his authority and issued a judicial decree, noting this proceeding and signing with the aforesaid executor, which fact I hereby certify—Jose Nicolas Yrastorza—Jose Telesforo de Guzman—Francisco Castro de Reyes. It agrees with the head, clauses and foot of the legalized will of the deceased, Mrs. Petro-

nila de Guzman, and appointment of executor which was exhibited by Mr. Jose Telesforo de Guzman and was returned to him. And in compliance with the order entered upon his petition regarding the first matter I caused said certification to be written in two sheets including this one, Manuel Vicente, Pascual Natividad and Juan Lazaro being witnesses as to their data and correctness which is done in this City of Manila on March 2, 1820, which fact I hereby certify—Francisco Castro de Reyes. The Bachelor, Mr. Juan Nepomuceno Mijares, Parish Priest of this town of Binondo, synodal examiner of this Archbishopric of Manila, certified in due form that on folio 2018 and over of Book 18 of baptisms which is filed in his parochial church of our Lady of the Rosary and Saint Gabriel, the following entry is found—On the 8th of August, 1806, the Bachelor, Mr. Leon de los Santos, with my license solemnly baptized and put the holy oil on Esteban de Guzman, four days old, legitimate son of Mr. Jose Telesforo de Guzman and Mrs. Juana Josefa Malgarejo, mestizos, residents of the sitio of

San Jose, his godfathers having been Domingo de Guzman and Dionisio Malgarejo, and below there is a signature which says Doctor Javier de Torres— which certificate was faithfully and legally taken from the book where it is entered. And in testimony thereof I issued the present certificate at the instance of the interested party and signed it in this parochial house of this town this 3rd day of February, 1820. Bachelor Juan Nepomuceno Mijares.

I, the undersigned Secretary of Chamber and Government of this Archbishopric, do hereby certify that on folio 179 of Book 2 of Confirmation which is kept in the present government of the Right Reverend Mgr. Metropolitan Archbishop of these Islands, there appears the following entry—On January 11, 1819, holding confirmation, the Right Reverend Fr. Juan Antonio de Zulaybar, member of council of H. M., Metropolitan Archbishop of the Philippine Islands in the chappel of his Archipiscopal Palace, confirmed Esteban Sixto de Guzman, son of Mr. Jose Telesforo de Guzman and Mrs. Juana Malgarejo, natives and residents of the town

of Binondo, his sponsor having been Mr. Domingo de Guzman—which certificate agrees exactly and lawfully with its original. Manila, January 19, 1920—Dr. Raymundo Roxas, Secretary—I, Mr. Jose Alvarez, merchant of this City, do hereby certify in due form that it is true that I am paying fifteen pesos a month for the house of stone and mortar in which I am living, which belongs to the deceased, Mrs. Petronila de Guzman. In testimony whereof, and at the instance of her executor, I gave this paper in this town of Binondo this April 22, 1820. Jose Alvarez.

PETITION OF THE EXECUTOR

Most Illustrious and Most Reverend Sir—Don Jose Telesforo de Guzman, resident of the town of Binondo, with all due respect, before Your Illustrious Grace in the best legal form, I present myself and say,—That the annexed testimony which with due solemnity I enclose shows that my deceased great grandmother, Da. Petronila de Guzman, provided in her last will the institution of a collative chaplaincy for one son of mine named Esteban Sixto de Guzman, student of the Royal College of San Juan de Letran, for the

patronage of which the Most Reverend Father President of said College has been named, with a house of lime and stone situated at Calle Rosario as capital, which, according to the Certificate hereto attached, nets a rent of One Hundred Eighty Pesos Annually, it being located on the Calle Real del Rosario; and I, being her testamentary executor and appointed administrator of my above mentioned son, present myself before Your Most Illustrious Grace, praying that you declare sufficient the income (congrua) referred to and order that a title to said chaplaincy issue to my said son and to me the administrator during his minority. This is what I beseech of Your Illustrious Grace, and to secure it to Your Illustrious Grace I humbly ask and request that you so decree and order as I pray for. I swear according to form—FURTHER—the deed of ownership of the house which I also attach, I request that after this petition is terminated, said document be delivered to me as above requested —JOSE TELESFORO DE GUZMAN. Manila, April 24, 1820— —To the Promotor Fiscal—Sub-

scribed and sealed before me, Doctor Rojas, Secretary—In the City of Manila on the 26th day of April, one thousand eight hundred and twenty, before me the Clerk of Court and the undersigned witnesses, (appeared) D. Jose Telesforo, resident of the Town of Binondo, and testamentary executor of the deceased Da. Petronila de Guzman, as shown by the certificate which was shown me and which appears to have been sealed and signed by the Escribano Publico Dn. Francisco Castro de Reyes, to me known and said— That whereas the said Petronila de Guzman, deceased, has ordered in the ninth clause of her will that after her death a house of lime and stone belonging to her be constituted into a chaplaincy, which house had been constructed by her and her deceased sister Doña Vicenta de Guzman who died single, the expenses of the construction of which amounted to ONE THOUSAND SIX HUNDRED PESOS without including the value of the lot whereon said house is erected, in said Town of Binondo and is bounded towards the right of its exit by that (house) in which the said testa-

trix formerly lived, which was her own; and to accomplish the foundation of said chaplaincy in accordance with law, the said executor (Telesforo de Guzman) appeared before the Most Illustrious and Most Reverend Metropolitan Archbishop, stating that he had the pension in consideration of which the chaplain had to say sixty masses annually in the churches of this City or in those of its vicinities and in privileged altars for the benefit of the souls of her deceased parents, Don Tomas de Guzman and Doña Sebastiana de Jesus, of the testatrix and of her brothers and sisters, electing as chaplain her great grandson, Don Esteban de Guzman, a student of the Royal College of San Juan de Letran, and as administrator (to act) during the minority of the said chaplain, the executor himself, whom she has empowered to appoint as Patron of the chaplaincy the Father President of the said Royal College of San Juan de Letran, asking that the said *congrua* (pension, living or maintenance) the rents of the property of which amount at present to ₱180.00 per year, be declared sufficient, issuing

the corresponding title of chaplain to his said son (the son of the executor), and that by virtue thereof said property is segregated from temporal properties and transferred to the spiritual properties of this Archbishopric, without its being possible to alienate or convert the property as such into any other estate for any cause, even though it be of a more pious character, protesting that if the contrary should be done from now until then, he (the executor) declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents, and the said executor affirms and ratifies said condition before me and the witnesses hereinbelow named, so that by virtue of this Deed of Foundation canonical collation may be conferred on the said appointed chaplain. And for its firmness and greater validity he renounces with all solemnity the laws that may favor the said decedent, inserting and repeating herein all the clauses that may be necessary with all the requisites and conditions, so that the purpose which actuated her to do this

act of piety may be duly accomplished, with the solemnities above set forth and the conditions herein inserted, which he asks and charges the above named chaplain and those who will succeed him to respect, comply and execute ad perpetuam rei mee memoriam amen. Executed and signed by me, witnessed by Juan Nepomuceno, Agapito de la Cruz and Manuel Lopez, who were present and to which I certify.—Jose Telesforo. Before me—Pedro Alejandrino Flores. They agree with their originals which may be seen from folio 48 and over to 49 of my current record of public documents of third stamp of this year and at the instance of the maker I give this certificate in four sheets including this day of of its execution and with the same witnesses who were present, which fact I hereby certify—place of the mark—it follows it —Pedro Alejandrino Flores—The Right Reverend Mgr. I, Mr. Telesforo de Guzman, resident of the town of Binondo, testamentary executor of the deceased, Mrs. Petronila, to Your Grace state in the best manner in law—that with due respect I attach hereto

the testimonials of the foundation of the chaplaincy indicated in my former application in this court in order that by virtue thereof and with knowledge of the same you may consider my reverent application relative to the chaplaincy that I apply for. And to that end—to Your Grace I humbly pray and request to so order as I have prayed for and which I beseech from you and I swear. Jose Telesforo de Guzman.

FISCAL COMMENT

Most Illustrious and Right Reverend Sir:—The Promotor Fiscal of this Archbishopric has seen the petition filed by Mr. Jose Telesforo de Guzman as testamentary executor of Mrs. Petronila de Guzman, as well as the foundation of a collative chaplaincy of masses which said testatrix orders, in clause 9 of her last will, which is legalized on folio 2 and over of this proceeding, to be founded upon a house of stone and mortar situated on Calle Real of the town of Binondo as evidenced by the said proceeding and says—That with respect to the said foundation the same is in order and in accordance with the provision made by said testatrix in clauses 9, 10, 11 of

the said will, and the undersigned does not have any objection to make to said application of said executor and consequently Your Grace may grant it by your authority and judicial decree in the manner and form usual in law ordering likewise that a note be made of said foundation in the proper book and in the church register of this Noble City for its better perpetuation; however, Your Grace may order what you deem is more proper in the premises. Manila, May 10, 1820. Lic. De Santos.

DECREE OF APPROVAL OF THE CHAPLAINCY FOUNDED BY MRS. PETRONILA DE GUZMAN *A MESTIZA* OF BINONDO.

In the City of Manila, this 12th of May, 1820, the Right Reverend Mgr. Fr. Juan Antonio de Zulaybar, member of council of H. M., Metropolitan Archbishop of these Islands, Apostolic Governor of the Vacant Bishopric of the Holy Name of Jesus of Cebu and Lieutenant General Vicar of the Royal Armies on land and sea in these eastern countries, having seen the petition of Mr. Jose Telesforo de Guzman, resident of the town of Binondo and testamentary executor of Mrs. Petronila de Guzman in the testimonial of foundation of the collative chaplaincy of masses which said

testatrix orders, in the ninth clause of her last will found in this proceeding, to be founded upon a house of stone and mortar belonging to her situated on Calle Real of said town of Binondo, the value of which amounted to the sum of ₱1,700 (one thousand seven hundred) together with the comment of the fiscal, said—That in conformity with the representations of the promotor Fiscal, he was disposed to approve and did approve the foundation of the chaplaincy with all the circumstances and conditions provided for in said clause (of the will) and in the deed of foundation, as well as the imposition (charge) of seventeen hundred pesos against said building, converting said sum into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction for all of which and what is annexed thereto and is connected therewith, he made use of his authority and issued this judicial decree ordering that a note of said foundation be made in the church register of the Noble City and in that of the Ecclesiastical court and after this proceeding said executor will

present himself to the parish priest in order that the proper appointment may be issued to the chaplain. And by this order he provided as stated, and said Right Reverend ordered and signed, which fact I hereby certify—The Archbishop—Before me Dr. Raymundo Rojas, Secretary.

EXHIBIT "B" STIPULATION OF FACTS

THE PROVISOR AND VICAR GENERAL
MANILA

SAN JUAN DE LETRAN COLLEGE
P. O. Box 146—Tel. 991.

"Excmo. y Rvmo.
Sr. Dr. D. Miguel O'Doherty,
Archbishop of Manila.

I, the undersigned, Fray Calixto Prieto, O. P, President of the San Juan de Letran College of this City of Manila, to His Grace, with greatest respect, state:

That D. Angel Gonzalez y Guzman, having asked me to present his son Raul Gonzalez for the chaplaincy instituted by his ascendant, Da. Petronila de Guzman, and I, believing that he is entitled to it, according to the will of the deceased;

In my capacity as patron of said chaplaincy as recited in one of the clauses of the last will of the said Da. Petronila de Guzman:

I have the honor to present to His Holy Grace

the young man Raul Gonzalez y Gonzalez for the chaplaincy for which he applies in the document hereto attached.

God bless his Holy Grace for many years.

(Sgd.) FR. CALIXTO PRIETO, O. P.
Rector."

EXHIBIT "C" STIPULATION OF FACTS

ARCHBISHOPRIC OF MANILA

March 20, 1922.

Mr. Angel Gonzalez y Guzman

Dear Sir:

I have studied the case of the chaplaincy for which you apply for your son Raul Gonzalez y Gonzalez, and asked the opinion of persons well versed on the matter. After making the best effort for elucidating the point as to the capacity of the proposed candidate for the enjoyment of the chaplaincy founded by Mrs. Petronila de Guzman, I have arrived at the conclusion that the boy Raul Gonzalez has not at present the qualifications required for chaplain of the said chaplaincy.

The grounds of my conclusion are the very canons of the new Code of Canon Law. Among others, I can mention canon 1442 which says: "Simple chaplaincies or benefices are conferred upon clergymen of the secular clergy," in connection with canon 108, paragraph 1, "Clergymen are those already initiated in the first tonsure" and canon 976, paragraph 1, "No one can be promoted to first

tonsure before he has begun the course in theology".

In view of the Canon as above mentioned, and other reasons which may be adduced, I believe that the boy, Raul Gonzalez, is not legally (ecclesiastically speaking) capacitated to the enjoyment of a chaplaincy.

Hoping that I have explained myself clearly, I remain,

Your servant and chaplain,
(Sgd.) MIGUEL
Archbishop of Manila."

EXHIBIT "A"—COMPLAINT

PERTINENT PARTS OF THE WILL OF
Da. PETRONILA DE GUZMAN.

"In this Town of Binondo this thirteenth day of March, one thousand eight hundred and sixteen, A. D., I, Da. Petronila de Guzman, a resident of this said town, finding myself sane and fearful of death due to my advanced age, believing as I truly do in the Supreme Mystery of the Holy Trinity, Father, Son and the Holy Ghost, three distinct persons and only one true God, and in all others that I believe are preached and taught by our Holy Mother, the Roman Catholic Apostolic Church, under whose faith and belief I have lived and profess to live and die as a Catholic and a faithful devotee, and I invoke for my intercessor the Queen of the Angels the Most Holy Mary Mother of God and Our Lady, My Holy Guardian Angel, the saint of my namesake and of other saints of my devotion that they

intercede with the Lord for the forgiveness of my sins and present my soul to eternal glory when I leave this world. Wherefore, and for the legal effects hereof, I sign this my will and testament, as follows:

Ninth Item:—I declare and charge that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister Da. Vicenta de Guzman we have constructed with our own money, the expenses of which amount to one thousand six hundred pesos without including the value of the lot on which it is erected, and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. Jose Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian (colegial) of San Juan de Letran, who should be an orphan *mestizo*, native of this said town, and I request the Father chaplain to celebrate sixty masses annually, which should be said in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in behalf of the souls of my father, Dn. Tomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and my brothers and sisters, and for me, the testatrix after my days.

Tenth Item:—It is my will that for patron

of said chaplaincy my executors name the Father President of the College of San Juan de Letran.

Eleventh Item:—I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain.

Eighteenth Item:—I revoke and annul all the wills and powers to make will and other testamentary dispositions that before this date I may have made and executed before any clerk of court in order that they should not be given any effect in any action or extrajudicially, except this will and testament whose clauses it is my will that they be kept, complied with and performed and in testimony thereof I sign.

PETRONILA DE GUZMAN.

EXHIBIT "B"—COMPLAINT

Most Excellent and Most Ilustrious
Archbishop of Manila

Most Excellent and Most Ilustrious Sir:

The undersigned, one of your humblest and most faithful subjects in the church of Christ, trusting in the spirit of justice and sublime goodness which have always characterized the diocesan administration of your Illustrious Grace, begs leave to submit to the consideration of your Illustrious Grace the following facts:

1st.—That Angel Gonzalez, native and resident of this municipality of Baliwag, Bulacan, for some time enjoyed the benefits of the chaplaincy founded by the deceased, Da. Petronila de Guzman, for which purpose said Gonzalez studied although, it is true, he did not finish the career of priesthood in the Seminary of Manila.

2nd.—That said Gonzalez has at present a son named Raul Rogerio Gonzalez of eleven years of age, more or less, and who, notwithstanding his tender age, according to personal observations of the undersigned, is now showing in a noteworthy manner, vocation and aptitude for the laborious career of priesthood.

3rd.—That the chaplaincy above mentioned, according to the knowledge of the undersigned, is actually vacant, that is, without beneficiary; and

WHEREFORE, with the greatest humility and due respect the undersigned recommends and submits to the consideration of your Illustrious Grace the name of Raul Rogerio Gonzalez to occupy the vacancy above mentioned.

He kisses the pastoral ring and awaits your benediction.

(Sgd.) JUAN MENDOZA."

EXHIBIT "C"—COMPLAINT

"Obando, Bulacan
November 17, 1923

Most Excellent and Most Illustrious Archbishop
Manila, P. I.

Most Excellent and Most Illustrious Sir:

The undesigned, the last and humblest but

one of the most faithful sons of the Holy Roman Catholic Apostolic Church, begs leave to submit to the consideration of Your Illustrious Grace the following facts:

1.—That he has been administering the parish of Baliwag, Bulacan, for a period of 15 years, and consequently had the oportunity to possess information, more or less thorough, of the persons and things of the above-mentioned parish.

2.—That there exists in this Archbishopric of Manila a chaplaincy founded by Da. Petronila de Guzman for the benefit of young people who embrace the career of priesthood, and that this chaplaincy was last occupied by Angel Gonzalez who studied for the priesthood in the Seminary of Manila, without finishing it.

3.—That the above-mentioned Gonzalez has a son named Raul Rogerio Gonzalez, a boy of almost eleven years of age, who, nowithstanding his youth, is showing in the opinion of the undersigned, aptitude and vocation for the career of priesthood.

WHEREFORE, said chaplaincy being actually vacant the undersigned with the greatest humility has taken the liberty to recommend to Your Illustrious Grace the name of Raul Rogerio Gonzalez to occupy the above-mentioned chaplaincy for the greater glory of God and highest good of the interest of the Roman Catholic Apostolic Church.

He kisses your pastoral ring, awaiting your benediction.

(Sgd.) BENITO CEBRERO."

EXHIBIT "D"—COMPLAINT

"Most Excellent and Most Illustrious Sir:

That the spouses Angel Gonzalez and Adelaida Gonzalez, natives and residents of the town of Baliwag, Bulakan, legitimate parents of the boy Raul Rogerio Gonzalez, a pupil in the fourth grade of the Public School of said town, studying with notable progress and success, who religiously obeys the exact compliance of his duties, whose well *known morality* within an without the schoolroom has manifested itself, as well as his inclination for the career of priesthood by his unquestioned conduct bent toward the Catholic Apostolic Religion, all of these I know in an indubitable manner for being a resident of this town from the time that said boy began his studies.

I am also aware that the father of said boy during his ecclesiastical career had the hereditary chaplaincy founded by his grandmother, Da. Petronila de Guzman.

In view of the foregoing, I request of Your Illustrious Grace and in view of the vacancy in said chaplaincy, to take into consideration the qualifications of the boy.

May God preserve Your Grace, Illustrious Sir:

(Sgd.) VICTOR ENRILE".

EXHIBIT "E"—COMPLAINT

"Most Excellent and Most Illustrious Sir:

I know the spouses Angel Gonzales and Adelaida Gonzalez, legitimate parents of the boy Raul Rogerio Gonzalez, who is at present studying in the Public School of Baliwag, Bulacan, in the fourth grade, *whose conduct is unblemished* for his strict compliance with his scholastic duties, in which there has always been observed *remarkable morality* in the compliance of his duties whose inclination to the career of priesthood has been manifested for many years until now.

I know very well and am positive that the father of this boy has a chaplaincy under the wise administration of Your Grace, founded by Da. Petronila de Guzman.

WHEREFORE, I recommend the boy Raul Rogerio Gonzalez to the above-mentioned chaplaincy, asking that he be duly admitted.

May God preserve Your Illustrious Grace for many years.

(Sgd.) MARCOS PONZAL."

EXHIBIT "F"—COMPLAINT

GENERAL LAND REGISTRATION OFFICE
FORM No. 44
JUDICIAL FORM No. 113
BOOK (Transfers) No. T-38 Page No. 238
DEC. 17917
Cert. 2878, L. A-6.
TRANSFER CERTIFICATE OF TITLE No. 17603.

OFFICE OF THE REGISTER OF DEEDS
FOR THE CITY OF MANILA

Transfer from No. 2878. Originally registered on the eighth day of September, in the year nineteen hundred and fourteen, in book No. A-6, page 378, of the said City of Manila, pursuant to a decree entered in Case No. 9490—Cat. 40, G. L. R. O. Record No. Cad. 193.

It is hereby certified that the Roman Catholic Archbishop of Manila, of Manila P. I., is the owner in fee simple of certain land situated in said City of Manila, more particularly bounded and described as follows:

"A PARCEL OF LAND (lot No. 4 of Block No. 2021 of the C[illegible]astral Survey of the City of Manila), with the buildings and improvements thereon, situated on the NE. line of Calle Rosario, District of Binondo. Bounded on the NE. by Lots Nos. 3 and 5 of Block No. 2021; on the SE. by Callejon Carvajal, on the SW. by calle Rosario; and on the NW. by Lot No. 3 of Block No. 2021. Beginning at a point marked 1 on plan, being S. 30 deg. 06'E. 71.88 m. from Fire Hydrant No. C-295; and S. 57 deg. 16'W., 97.92 m. from fire Hydrant No. 385; thence N 30 deg. 28'W., 927 m. to point 2; thence N 54 deg. 41E., 25.47 m to point 3; thence S. 34 deg. 40'E., 359. m. to point 4; thence S. 35 deg. 36'E., 5.67 m. to point 5; thence S. 54 deg. 44'W., 26. 24'W m. to the point of beginning; containing an area of TWO HUNDRED THIR-

TY EIGHT SUARE METERS AND NINETY SQUARE DECIMETERS (238.90m.), more or less. All points referred to are indicated on the plan and on the ground points 1 and 5 are marked by spikes and point 4 by a spike in wall; bearings true; date of survey, May 23—1916—October 6, 1917."

It is hereby further certified that said land is registered in accordance with the provisions of the Land Registration Act in the name of THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, subject, however to such of the incumbrances mentioned in article 39 of said Law as may be subsisting, and to the payment of ₱56.03 as cost of survey and registration.

Witness: The Honorable CARLOS A. IMPERIAL, Judge of the Court of First Instance, Fourth Branch, City of Manila.

Entered at the City of Manila, P. I., this seventh day of June, in the year nineteen hundred and twenty two, at 10:18 A. M.

ATTEST:

(Sgd.) JOAQUIN JARAMILLO
Register of Deeds.

(SEAL)
COURT OF FIRST INSTANCE

(SEAL)
REGISTER OF DEEDS

I hereby certify that the foregoing is a correct copy of the original of Transfer Certificate of Title No. 17603, Registry Book T-38, as regards the part thereof written in English, and in witness thereof, at the instance of the Law Office of Gibbs & McDonough, I have issued this certificate in Manila this 29th day of July, 1924.

(SGD.) JOAQUIN JARAMILLO
Register of Deeds.

(Seal of the Register of Deeds)
(20 centavo documentary stamp).

EXHIBIT "B" EVIDENCE

"Manila, December 27, 1923.

To His Grace,
M. J. O'Doherty,
Archbishop of Manila,
95 Arzobispo, Manila.

RE GONZALEZ CAPELLANIA.

We have the honor to request the appointment of Raul Rogerio Gonzalez as capellán of the capellania founded by Dña. Petronila de Guzman on the 13th of March, 1816. Raul Rogerio Gonzalez is the legitimate son, eleven years of age, of Angel Gonzalez, the last occupant or beneficiary of the capellania, and posseses the necessary intelligence, aptitude and spiritual inclination for the career of priesthood, as shown by the enclosed copies of certificates.

Are we correct in assuming that our client,

upon his appointment, will become entitled to the rents of the capellania situated at Nos. 210, 212 and 214 Calle Rosario, which have been collected since the settlement with Angel Gonzalez of 1910? An early reply will be appreciated.

Sincerely yours,

GIBBS & McDONOUGH
By: (Sgd.) A. D. GIBBS.

EXHIBIT "C" EVIDENCE

GIBBS & McDONOUGH
LAWYERS

Telephone No. 174-Cable Address: "Gibslaw"
Rooms 301-302 Roxas Building
Manila, P. I.,
Manila, January 26, 1924.

To His Grace,
M. J. O'Doherty,
Archbishop of Manila,
95 Arzobispo, Manila.

Will Your Grace be kind enough to reply to our letter of December 27th, 1923, requesting the appointment of Raul Rogerio Gonzalez to the Gonzalez capellania.

Sincerely yours,

GIBBS & McDONOUGH
By (Sgd.) A. D. GIBBS.

EXHIBIT "D" EVIDENCE

HARTIGAN & WELCH
ATTORNEYS AND COUNSELLORS
MANILA

February 13, 1924.

Gentlemen:

In reply to your letters of December 27, 1923 and January 26, 1924, to His Grace the Archbishop, requesting the appointment of Raul Rogerio Gonzalez to the Gonzalez Capellania, we beg to state that after examination of this matter, we are of the opinion that the applicant lacks the requisite qualifications to entitle him to this appointment, and for that reason the request must be denied.

Very truly yours,
HARTIGAN & WELCH
By (Sgd.) THOMAS CARY WELCH

Messrs. Gibbs & McDonough
Manila.

EXHIBIT "E" EVIDENCE

GIBBS & McDONOUGH
LAWYERS
Telephone No. 174-Cable Address "Gibslaw"
Rooms 301-302 Roxas Building

Manila, Feb. 14, 1924.

Messrs. Hartigan & Welch,
Manila, P. I.

Gentlemen:

RE GONZALEZ CAPELLANIA

Replying to yours of February 13, 1924, advising that you are of the opinion that the applicant Raul Rogerio Gonzalez lacks the requisite quali-

fications to entitle him to appointment to the above mentioned capellania, will you be kind enough to specify in what respect, or for what reason it is claimed that he is not qualified for such appointment? We would, of course, be loath to enter into litigation with His Grace, and if he, or you in his representation can give convincing reasons why he is not qualified for or entitled to the appointment, we trust we shall be able to accept them.

Yours very truly,
GIBBS & McDONOUGH
By (Sgd.) A. D. GIBBS

EXHIBIT "F" EVIDENCE

GIBBS & McDONOUGH
LAWYERS

Telephone No. 174-Cable Address "Gibslaw"
Rooms 301-302 Roxas Building
Manila, P. I.

Manila, March 14, 1924.

Messrs. Hartigan & Welch,
Manila, P. I.

Gentlemen:

RE GONZALEZ CAPELLANIA

Will you be kind enough to answer my letter of February 14th, 1924, with reference to the above matter.

Yours very truly,
GIBBS & McDONOUGH
By (Sgd.) A. D. GIBBS.

EXHIBIT "G" EVIDENCE

HARTIGAN & WELCH
ATTORNEYS AND COUNSELLORS
Manila

March 22, 1924.

PERSONAL

Dear Mr. Gibbs:

With regard to the Gonzalez Capellania, it is due to you to say that we wrote His Grace early in February, submitting a letter prepared by us declining to make the appointment and asking his comment thereon, since when we have not heard from him for the reason, as we understand, he is quite ill.

Under the circumstances, I do not feel that I can say more than that he declines to act. I am sorry if I have appeared discourteous. It certainly was not my intention.

Yours sincerely,

HARTIGAN & WELCH
By (Sgd.) THOMAS CARY WELCH.

ALLISON D. GIBBS, Esq.,
Manila.

EXHIBIT "A" EVIDENCE
Civil Case No. 26677.
Account of the Debit and Credit of the Chaplaincy Founded by Mrs. Petronila de Guzman.

	DEBIT	CREDIT
BALANCE		₱ 3,721.85
1911		
Rents collected for ten months....		5,500.00

	DEBIT	CREDIT
Insurance	628.16	
Real property tax	824.33	
Administration and legal expenses prorata	2,010.00	
1912		
Rents collected		6,500.00
Real Property tax	130.17	
Water	5.85	
Works	24,503.34	
Legal and administration expenses prorata	2,010.00	
1913		
Rents collected		12,000.00
Works	286.00	
Real Property tax	840.51	
Legal and administration expenses prorata	2,010.00	
1914		
Rents collected for 9 months		9,000.00
To the Bureau of Lands Real Property tax	840.51	
Fees of court on September 22	62.03	
Survey on July 20	56.03	
Insurance	502.50	
Legal and administration expenses prorata	2,010.00	
1915		
Rents Collected for ten months		₱ 10,000
Fire insurance	₱ 958.57	
To the Bureau of Lands, Real Property tax	840.51	
M. Ventura, judicial expenses	5.00	
Legal and administration expenses prorata	2,010.00	
Sheriff's and judicial expenses	5.12	
1916		
Rents for December 1915 to November 1916		10,400
Insurance	439.70	
Bureau of Lands Real Property tax	840.51	

	DEBIT	CREDIT
10% administration	1,040.00	
3% Seminary	312.00	
1917		
Rents in 1917....		8,400
Real property tax	570.04	
To Perez Samanillo, materials....	25.80	
To Gerardo Urbina "	1.18	
Sundry wages and materials.....	15.70	
Insurance	439.70	
10% Administration	840.00	
3% Seminary	252.00	
1918		
Rents in 1918		8,400
Real Property tax	570.04	
Insurance	439.70	
Sundry materials and wages	669.61	
10% administration....	840.00	
3%Seminary	252.00	
Payments made for balance	19,570.00	
1919		
Net income in 1919 of urban property on Calle Rosario, Nos. 208/214		6,013.24
For sixty masses applied for a/c of income of 1918 for seminary.....	6,265.34	
1920		
Net income in the present year 1920 of urban property Calle Rosario Nos. 208/214		P 6,460.07
The Archbishop Mons. M. J. O'Doherty having taken charge of the compliance of the charges of this foundation has ordered, according to letter of the 14th instant, that the incomes of the year 1919 be credited to the account of the foundation 145 3% of the Seminary	P 6,013.24	
1921		
Net income in the present year 1921 of the urban property, House		

	DEBIT	CREDIT
Calle Rosario, Nos. 208/14		₱ 7,745.27
For sixty masses applied for a/c of income of 1920 for seminary	6,460.07	
1922		
Net income during the year 1922.		8,489.37
Delivered to Sister Venancia Panlaqui, fees of four sisters of Catholic School of Silang, Cavite for the month of October, v/369.....	200.00	
Do to do. do of the do do. do. do. do. for the month of November v/406	200.00	
Subsidy to Catholic Schools, to wit: v/432		
Silang .... ..₱800.00		
Parañaque ...."360.00		
Maragondon ..."120.00		
Las Piñas ....."150.00		
Cawit .. .."600.00		
Bulacan .. ..."150.00		
Bacoor ...."325.00	2,505.00	
1923		
Net income during the year 1923..		9,281.27
To Father Gregorio Florencio subsidy to Catholic school of Bacoor	65.00	
To Father V. de Lerk subsidy to Catholic School of Las Piñas	25.00	
Sister Efigenia subsidy to catholic school, Cawit v/4	100.00	
Buen Consejo College, Pasig, Rizal, subsidy June to December v/8....	280.00	
Father Van Runkelen subsidy Dec. 22 Catholic school of Parañaque v/8....	60.00	
Sister Panlaqui subsidy, catholic school, Silang. Dec. /22, v/13....	200.00	
Father Fernandez subsidy. agt/Dic./22 catholic school, Malolos v/19....	125.00	
Father Florencio subsidy catholic		

	DEBIT	CREDIT
school, Bacoor, v/21....	65.00	
Sister Alvarez subsidy, January catholic school, Cawit	100.00	
P. C. del Rosario subsidy catholic school of Bulacan	90.00	
Father Van Runkelen subsidy catholic school of Parañaque	60.00	
To V. De Lerk, subsidy, January catholic school, Las Piñas.....	25.00	
Sister Tomasa subsidy January catholic school, Pasig	40.00	
Sister Venancia subsidy, January catholic school, Silang	200.00	
Father Florencio subsidy, February catholic school Bacoor	65.00	
Sister E. Alvarez subsidy. Feb. catholic school, Cawit	100.00	
Father V. de Lerk subsidy Feb. catholic school, Las Piñas	25.00	
Sister Tomasa subsidy, Feb. catholic school Pasig	40.00	
Father Van Runkeler subsidy Feb. catholic school, Parañaque	60.00	
Sister Venancia subsidy, Feb. catholic school, Silang	200.00	
Father Mariano Airan the stipend of 20 masses	40.00	
Father Gregorio Florencio the stipend of 5 masses	10.00	
Father Van Kunkeler the stipend of 5 masses.	10.00	
Father Maximo Jovellanos the stipend of 4 masses.....	8.00	
Father Victor de Klerk the stipend of 3 masses	6.00	
Father Pablo Hubaux the stipend of three masses	6.00	
Father Vicente Fernandez the stipend of 3 masses	6.00	
Father Maximo Jovellanos subsidy, Jan. and Feb. catholic school, Marigondon	80.00	

	DEBIT	CREDIT
Father Candido del Rosario, subsidy Feb. catholic School Bulacan.	P 30.00	
Father Candido del Rosario stipend of 3 masses	6.00	
January 31, 1923, credited on this date to Seminary	8,489.37	
To the Archbishop the compliment of the charges of 1922....	8.00	
Father Gregorio Florencio, subsidy, March catholic school of Bacoor	65.00	
Sister Micaela Cuenca subsidy March catholic school, Cawit....	100.00	
Father Van Runkeler subsidy, March catholic school Parañaque	60.00	
Sister Tomasa subsidy, March catholic, school, Pasig....	40.00	
Father Jovellanos subsidy, March catholic school Maragondon	40.00	
Sister Venancia subsidy. March catholic school Silang	200.00	
Father Candido del Rosario, subsidy, catholic school, Bulacan	30.00	
Father Vicente Fernandez January February and March, Catholic school Malolos	75.00	
Father Victor de Klerk March catholic school Las Piñas	25.00	
Father Gregorio Florencio, April, catholic school, Bacoor.	65.00	
Sister Micaela Cuenca, subsidy, April, catholic school, Cawit	100.00	
Father Victor de Klerk subsidy, April catholic school Las Piñas,...	25.00	
Sister Micaela Cuenca subsidy. May catholic school Cawit	100.00	
Fahter Victor de Klerk subsidy, May catholic school Las Piñas....	25.00	
Father Gregorio Florencio subsidy May catholic school Bacoor	65.00	
Father Van Kunkeler subsidy. May and April catholic school, Parañaque	120.00	
Father Gregorio Florencio, subsidy		

	DEBIT	CREDIT
June catholic school, Bacoor.....	P 90.00	
Father Vicente Fernandez, subsidy April, May and June catholic school Malolos	75.00	
Father Victor de Klerk, subsidy, June catholic school Las Piñas...	25.00	
Father Cipriano Aguirre subsidy, June catholic school Bocawe	50.00	
Sister Micaela Cuenca subsidy June catholic school Cawit	100.00	
Sister Tomasa de la Sagrada Famila catholic school Pasig	40.00	
1923		
Father Van Runkeler subsidy, June catholic school Parañaque...	60.00	
Miss Vaca for Holy Family college	59.00	
Catholic School of Bulacan. subsidy April to June.....	90.00	
Catholic School Maricaban subsiday June.....	45.00	
Sister Micaela Cuenca subsidy June, catholic school Cawit.....	100.00	
Father Gregorio Florencio subsidy July catholic school Bacoor	90.00	
Catholic School of Marikaban subsidy July.....	45.00	
Catholic School of Parañaque subsidy July	60.00	
Catholic School of Pasig, subsidy April, May and July.....	120.00	
Catholic school of Bulacan..subdy July	30.00	
Catholic School of Las Piñas, subdy July	25.00	
Catholic School of Bacoor, subdy, August	90.00	
Miss Vaca for Holy Family College	73.20	
Sister M. Cuenca, subsidy catholic school, Cawit	100.00	
Father Van Kunkeler, subsidy August catholic school Parañа-		

	DEBIT	CREDIT
que....	P 60.00	
Catholic school of Bulacan, subsidy August	30.00	
Catholic school of Las Piñas, subsidy August, ...	25.00	
Catholic school of Pasig, subsidy, August....	40.00	
Catholic school of Marikaban subsidy August	45.00	
Catholic school of Malolos, subsidy July-August	50.00	
Catholic school of Bacoor subsidy September	90.00	
Miss Vaca for Holy Family College	78.10	
Catholic School Las Piñas, subsidy September	25.00	
Catholic School of Bulacan subsidy September	30.00	
Catholic school of Marikaban subsidy September	45.00	
Catholic school of Cawit subsidy September	100.00	
Catholic School of Pasig subsidy September	40.00	
Catholic School of Parañaque subsidy September	60.00	
Catholic School of Marigondon subdy of June, July, August and September	160.00	
Catholic School of Cawit subsidy of October	100.00	
Catholic School of Bacoor subsidy of October	90.00	
Miss Anita Vaca for Holy Family College....	70.70	
Catholic school of Marikaban, subsidy October	45.00	
Catholic School of Pasig, subsidy October	40.00	
Catholic school of Parañaque subsidy October	60.00	

	DEBIT	CREDIT
Catholic school of Bulacan subsidy October	30.00	
Catholic school of Malolos subsidy September	50.00	
Catholic school of Las Piñas subsidy October	25.00	
Miss. A. Vaca for Holy Family College	81.50	
Catholic School of Bacoor, subsidy November	90.00	
Catholic school of Cawit subsidy November	100.00	
Catholic school of Bulacan subsidy November	30.00	
Catholic school of Marikaban subdy November	45.00	
Catholic school of Pasig subsidy November	40.00	
Catholic school of Parañaque subsidy November	60.00	
Catholic school of Montalban subsidy November	25.00	
Catholic school of Las Piñas subsidy November	25.00	
Catholic school of Bacoor subsidy December 1924	90.00	
Net income of year 1924		₱ 9,846.77
Catholic School of Marigondon subsidy of October November and December	120.00	
Catholic School of Kawit subsidy of December	100.00	
Catholic school of Parañaque subsidy December	60.00	
Catholic school of Marikaban subsidy December	45.00	
Catholic school of Las Piñas subsidy December	25.00	
Catholic school of Malolos subsidy November. Dec.	50.00	
Catholic school of Montalban subsidy November Dec.	25.00	
Catholic school of Bulacan subsi-		

	DEBIT	CREDIT
dy November Dec.	P 30.00	
Catholic school of Pasig subsidy November Dec.	40.00	
Catholic school of Maricaban subsidy January	45.00	
Catholic school of Kawit subsidy January	100.00	
Catholic school of Parañaque subsidy January	60.00	
Catholic school of Bulacan subsidy January	30.00	
Catholic school of Montalban subsidy January	25.00	
Catholic school of Pasig subsidy January	40.00	
Ca- School of Las Piñas tholic	25.00	
" " " Bacoor subsidy Feb.	90.00	
" " " Kawit do Feb/ Mar.	200.00	
" " " Marikaban do do do	45.00	
" " " Las Piñas do do do	25.00	
" " " Parañaque do do do	60.00	
" " " Bulacan " " "	30.00	
" " " Montalban do do do	25.00	
" " " Maragondon do Jan. Feb.	80.00	
" " " Malolos do do do	50.00	
" " " Pasig do do	40.00	
" " " Bacoor do do	90.00	
" " " Montalban do March	25.00	
" " " Parañaque do do do	60.00	
" " " Bulacan do do	30.00	
" " " Bacoor do April	90.00	
" " " do do March	90.00	
" " " Las do		

		DEBIT	CREDIT
Catholic School of Malo-	subsidy	Mar/April	P 50.00
" " " Piñas	do	do	25.00
" " " Kawit	do	April	100.00
" " " Para-	do		
ñaque	do	do	60.00
" " " Bula-	do		
can		do	30.00
" " " Las	do		
Piñas	do	do	25.00
" " " Bacoor	do	May	90.00
" " " Káwit	do	do	100.00
" " " Bulacan	do	do	30.00
" " " Las	do		
Piñas	do	do	25.00
" " " Para-	do		
ñaque	do	do	60.00
" " " Kawit	do	June	100.00
" " " Bacoor	"	"	90.00
" " " Para-	"		
ñaque	"	"	60.00
" " " Bulacan	"	June	30.00
" " " Pasig			40.00
" " " Mari-	do	Mar/	
kaban		June	180.00
" " " Malo-	do	May/	
los		June	50.00
" " " Las	do	do	
Piñas	do		25.00
" " " Ba-	do		
coor		July	90.00
" " " Mari-			
kaban	do	do	45.00
" " " Kawit	do	August/	
		July	200.00
" " " Bula-	do		
can		July	30.00
" " " Pasig	do	do	40.00
" " " Mon-	do	June	
talban		July	50.00
" " " Para-	do		
ñaque		July	60.00
" " " Las			
Piñas	do	do	25.00

		DEBIT	CREDIT
Catholic	School of Bacoor do	Aug.	90.00
"	" " Marikaban do	do	45.00
"	" " Parañaque do	do	60.00
"	" " Montalban do	do	25.00
"	" " Bulacan do	do	30.00
"	" " Pasig do	do	40.00
"	" " Las Piñas do	do	25.00
"	" " Malolos do	July August	50.00
"	" " Bacoor do	Septober	90.00
"	" " Montalban do	do	25.00
"	" " Kawit do	do	100.00
"	" " Parañaque do	do	60.00
"	" " Marikaban do	do	45.00
"	" " Pasig do	do	40.00
"	" " Bulacan do	do	30.00
"	" " Las Piñas do	do	25.00
"	" " Bacoor do	October	90.00
"	" " Kawit do	do	100.00
"	" " Parañaque do	do	60.00
"	" " Las Piñas do	do	25.00
"	" " Montalban do	do	25.00
"	" " Bulacan do	do	30.00
"	" " Pasig do	do	40.00
"	" Bacoor do	Nov.	90.00
"	" " Kawit do	do	100.00
"	" " Marikaban do	do	45.00
"	" " Pasig do	do	40.00
"	" " Montalban do	do	25.00

		DEBIT	CREDIT
Ca- School of Para-			
tholic	ñaque do do	60.00	
" " " Las			
	Piñas do do	25.00	
" " " Bacoor	do do	90.00	
Credited to the seminary balance			
of income of 1923		2,279.04	
1925.			
Net income of 1925 of property			
Nos. 208/14 on Calle Rosario....			9,281.27
Ca- School of Kawit			
tholic	sub- Dec.		
	sidy Jan.	200.00	
" " " Mari-			
	kaban do do	45.00	
" " " Bulacan do			
	Nov/		
	Dic.	60.00	
" " " Para-			
	ñaque do do	60.00	
" " " Pasig	do do	40.00	
" " " Malolos			
	do Sept do	100.00	
" " " Las			
	Piñas do do	25.00	
" " " Bacoor			
	do January	90.00	
" " " Mon-			
	talban do Dic do	50.00	
" " " Para-			
	ñaque do do	60.00	
" " " Mari-			
	kaban do do	45.00	
" " " Bulacan	do do	30.00	
" " " Pasig	do do	40.00	
" " " Las			
	Piñas do do	25.00	
" " " Bacoor	do Feb.	90.00	
" " " Kawit	do do	100.00	
Credited to Foundation 145 income			
of 1924....		120.00	

						DEBIT	CREDIT
Catholic	School	of	Montalban	subsidy	Feb.	25.00	
"	"	"	Marikaban	do	do	45.00	
"	"	"	Pasig	do	do	40.00	
"	"	"	Malolos	do	January do	50.00	
"	"	"	Parañaque	do	do	60.00	
"	"	"	Las Piñas	do	do	25.00	
"	"	"	Bacoor	do	March	90.00	
"	"	"	Kawit	subsidy	March	100.00	
"	"	"	Bulacan	do	Feb.	30.00	
"	"	"	do	do	March	30.00	
"	"	"	Marikaban	do	do	45.00	
"	"	"	Para ñaque	do	do do	60.00	
"	"	"	Pasig	do	do	40.00	
"	"	"	Las Piñas	do	do	25.00	
"	"	"	Kawit	do	April	100.00	
"	"	"	do	do	May	100.00	
"	"	"	Pasig	do	April do	80.00	
"	"	"	Bulacan	do	do	30.00	
"	"	"	Marikaban	do	do	45.00	
"	"	"	Las Piñas	do	do	25.00	
"	"	"	Parañaque	do	do	60.00	
"	"	"	Marikaban	do	May	45.00	
"	"	"	Parañaque	do	do	60.00	
"	"	"	Bulacan	do	do	30.00	
"	"	"	Las Piñas	do	do	25.00	

						DEBIT	CREDIT
Catholic	school	Bacoor	subsidy	June	P	90.00	
"	"	" Kawit	do	do		100.00	
"	"	" Pasig	do	do		40.00	
"	"	" Montalban	do	do		25.00	
"	"	" Parañaque	do	do		60.00	
"	"	" Marikaban	do	do		45.00	
"	"	" Bulacan	do	do		30.00	
"	"	" Las Piñas	do	do		25.00	
"	"	" Kawit	do	do		100.00	
"	"	" Pasig	do	do		40.00	
"	"	" Bacoor	do	do		90.00	
"	"	" do	do	August		90.00	
"	"	" Marikaban	do	July do		90.00	
"	"	" Kawit	do	do		100.00	
"	"	" Pasig	do	do		40.00	
"	"	" Parañaque	do	do		60.00	
"	"	" Bulacan	do	do		30.00	
"	"	Montalban	do	July		25.00	
"	"	Las Piñas	do	do		25.00	
"	"	Parañaque	do	August		60.00	
"	"	Las Piñas	do	do		25.00	
"	"	Bulacán	do	do		30.00	
"	"	Malolos	do	June/August		75.00	
"	"	Kawit	do	Septem-ber		100.00	
"	"	Marikaban	do	do		45.00	
"	"	Pasig	do	do		40.00	
"	"	Bacoor	do	do		90.00	
"	"	Parañaque	do	do		60.00	
"	"	Montal-					

				DEBIT	CREDIT
		ban	do August do	50.00	
"	"	Bulacan	do do	30.00	
"	"	Kawit	do October-	100.00	
"	"	Marikaban	do do	45.00	
"	"	Pasig	do do	40.00	
"	"	Bacoor	do do	90.00	
"	"	Parañaque	do do	60.00	
"	"	Montalban	do do	25.00	
"	"	Malolos	do September do	50.00	
"	"	Las Piñas	do do	50.00	
"	"	Bulacan	do do	30.00	
"	"	Kawit	do November	100.00	
"	"	Marikaban	do do	45.00	
"	"	Pasig	do do	40.00	
"	"	Bacoor	do do	90.00	
"	"	Parañaque	do do	60.00	
"	"	Bulacan	do do	30.00	
"	"	Montalban	do do	25.00	
"	"	Las Piñas	do do	25.00	
"	"	Kawit	do December	100.00	
"	"	Marikaban	do do	45.00	
"	"	Pasig	do do	40.00	
"	"	Bacoor	do do	90.00	
			Totals:	P117,246.07	P1[illegible],039.11

EXHIBIT "I" EVIDENCE

Account of Debit and Credit of the Chaplaincy Founded by Mrs. Petronila de Guzman

	DEBIT	CREDIT
1919		
Rents collected for December 1918 and January to November inclusive at ₱ 700.00		₱ 8,400.00
Paid fire insurance	₱ 439.70	
Real Property Tax	570.04	
do do do	285.02	
10% administration	840.00	
3% seminary	252.00	
BALANCE IN FAVOR OF FOUNDATION	6,013.24	
	₱ 8,400.00	₱ 8,400.00
1920		
Rents collected for December 1919 and January to November inclusive at 850.00		₱ 9,150.00
Paid fire insurance	₱ 439.70	
Real Property Tax	707.15	
do do do	353.58	
10% administration	915.00	
3% Seminary	274.50	
BALANCE IN FAVOR OF FOUNDATION	₱ 6,460.07	
	₱ 9,150.00	₱ 9,150.00
1921		
Rents collected for December 1920 and January to November inclusive at 1,000.00		₱ 11,400
Paid to Go-Joco for two galvanized iron tubes and two cast iron for drainage of this property	60.00	
Paid for fire insurance	439.70	
Real Property Tax	1,007.15	
Paid to Attorneys Araneta & Zaragoza	60.00	
do do do do do do	102.30	

	DEBIT	CREDIT
Real Property Tax	503.58	
10% administration	1,140.00	
3% Seminary	342.00	
BALANCE IN FAVOR OF FOUNDATION	7,745.27	
	P 11,400.00	P 11,400.00
1922.		
Rents for December 1921		P 1,000.00
Rents collected in the year for 11 months		11,000.00
Fire insurance	219.85	
do do....	219.85	
Real Property Tax	1,007.15	
Transportation	.20	
Real Property Tax	503.58	
10% Administration	1,200.00	
3% Seminary....	360.00	
BALANCE IN FAVOR OF FOUNDATION	8,489.37	
	P 12,000.00	P 12,000.00
1923		
Rents for December 1922		P 1,000.00
Rents collected this year for 11 months		11,910.00
Fire insurance	P 439.70	
Real Property Tax	1,007.15	
do do do	503.58	
10% administration	1,291.00	
3% Seminary	387.30	
BALANCE IN FAVOR OF FOUNDATION	9,281.27	
	P 12,910.00	P 12,910.00
1924.		
Rents for December 1923		P 1,130.00
Rents collected this year for 11 months		12,430.00
Fire insurance	P 439.70	
Real Property tax	1,007.15	

	DEBIT	CREDIT
do do do	503.58	
10% administration	1,356.00	
3% Seminary	406.80	
BALANCE IN FAVOR OF FOUNDATION	9,846.77	
	₱ 13,560.00	₱ 13,560.00
1925.		
Rents for December 1924		₱ 1,130.00
Rents collected this year for 11 months		11,780.00
Fire Insurance	₱ 439.70	
Real Property Tax	1,007.15	
do do do	503.58	
10% Aministration	1,291.00	
3% Seminary	387.30	
BALANCE IN FAVOR OF FOUNDATION	₱ 9,281.27	
	₱ 12,910.00	₱ 12,910.00

EXHIBIT "1"

FOUNDATION No. 69 PETRONILA DE GUZMAN
Book 4 folio 130.

DEBIT	CREDIT
	This foundation was formerly designated as No. 69 in the section of chaplaincies.
	ENDOWMENT
	Consists of an urban property situated on Calle Rosario known as No. 214. Now Nos. 208/214 Rosario V/ Ass. in 1918, ₱57,004.00.
	PATRON: Pres. San Juan de Letran.
	CHAPLAIN—Vacant.

DEBIT		CREDIT	
1919		1919	
Oct. 8		Jan. 2	
Delivered to Archbishop for application, net income of 1918	₱6,265.24	Endowment in urban property	₱11,632.92
1920		Net income in 1918 of urban property on Calle Rosario No. 214 ...	₱ 2,235.24
Feb. 18.		Dic. 31	
The Archbishop Mons. M. J. O'Doherty having taking charge of the compliance of the charges of this foundation, has ordered as per letter of 14th instant that the incomes of the year 1919 be credited to the foundation account No. 145-3% of Seminary	₱6,013.24	Net income in 1919 of urban property on Calle Rosario Nos. 208/-214....	₱ 6,013.24
1921		1920	
Sept. 10		Dic. 31	
For sixty masses applied for account of account of income of 1920 as per article of journal (For Seminary) ..	₱6,460.07	Net income of present year 1920 of urban property (House) Calle Rosario Nos. 208-14	₱ 6,460.07
		1921	
		Dic. 31	
		Net income of present year 1921 of urban property, House, on Calle Rosario Nos. 208-14	₱ 7,745.27

(EXHIBIT "2")

Can. 968—Par. 1. Only baptized male may validly receive ordination; but those, who according to the noly canons have the necessary qualification *in the opinion of the ordinary* (name for

bishop) and have no irregularity or impediment whatever, may lawfully receive.

Par. 2. Those who have some irregularity or impediment, although it be after the ordination and without their fault, cannot exercise the orders received.

Can. 1457—The presentation (of the applicant made by the patron), unless prevented by a just cause, whether in a laical patronage, ecclesiastical or mixed, must be made, if the law of the foundation or the lawful custom does not prescribe a shorter period, within the four months following the day when he who is called upon to make the institution notifies the patron that the position is vacant etc.

Can. 1464. Par. 1. The presentation must be made to the Ordinary of the place, who has *the right to judge* whether the person presented is fit or not.

Par. 2. In order to form such an opinion, the Ordinary must make inquiry, as required in Can. 149, about the person presented, and, if necessary, seek other proper reports even secret.

Par. 3. The ordinary *is not bound to state to the patron the reasons* why he cannot admit the person presented.

Can. 1354. Par. 1. Every diocese must have a seminary or college in an appropriate place selected by the bishop, wherein a certian number of

youths may be trained for the clerical state according to the possibilities of the diocese and its extent.

Par. 2. Effort must be made that those larger dioceses will have two seminaries, one small for the literary career, and another large for the career of philosophy and theology.

Par. 3. If no diocesan seminary can be erected or if the one in existence is not sufficient, especially that for theology and philosophy, the bishop shall send the students to another seminary outside, unless there is one in the region or an interdiocesan one instituted by the Holy See.

Can. 1364.—In the minor classes:

1. The religion subjects shall have the first place, according to the talent and age of each student.

2. The students shall carefully learn chiefly the languages of the country and latin.

3. In other subjects proper instruction shall be given according to the common culture and the state of the clergy of the region where they have to exercise their functions.

Canon 1365.—Par. 1. During two full years the students shall study philosophy and allied sciences.

Par. 2. The career of theology shall last four years, and besides the dogmatic and moral theology it shall include principally the study of

the holy scriptures, ecclesiastical history, canon law, lithurgy, religious oratory and ecclesiastical music.

Par. 3. They shall, moreover, have lessons in pastoral theology, with practical exercises chiefly in the teaching of cathechism, hearing confession, visiting the sick and attending the dying.

Can. 1448. The right of patronage is a series of privileges, with some charges which by *grant of the Church are* enjoyed by the catholic founders of a church, chaplaincy or benefice and their successors.

Can. 1455. The privileges of a patronage are:

1. That of presenting a *clergyman* for the church or office vacant.

2. After the charges are paid and a decent suppport of the beneficiary is covered, that of the right of receiving from the incomes of the church or foundation support by reason of equity (not of justice) if he is reduced to indigence without his fault, and this even if he has waived his right to patronage in favor of the church and even if in making the foundation he has reserved a pension to himself which proves insufficient.

3. To have, if permitted by the custom, the coat of arms of the family in the church of his patronage, and the preferential place over other Christians in the processions and functions and a special seat in the church, but outside of the presby-

terium and without canopy.

Can. 1465. Par. 1. If the one presented is not found fit, the patron may, unless the time fixed in Can. 1457 has elapsed through his fault, present another one within the same period. If neither the latter is found fit, the church or foundation becomes this time of free collation (the Bishop freely appoints), unless the patron or the one presented, within ten days from notice to him of the rejection, should file an appeal *to the Apostolic See from the judgment of the ordinary;* in the meantime the collation is suspended, and a vicar appointed to act as chaplain ad interim of the church or foundation.

Par. 2. The presentation made for money is absolutely worthless, just as the institution that follows it.

Can. 1481. After deducting the expenses of the acting chaplain, one-half of *the incomes of the vacant foundation shall be added to the endowment or capital of the institution, and the other half shall be used in the repair of the church and the sacristy, unless there is the custom of using the whole for some good common to the diocese.*

Can. 1458. Par. 1. If within the period fixed, no presentation is made, *the church or institution is for that time one of free collation* (of the bishop).

Par. 2. If there is some controversy.....

the collation is suspended until the end thereof and in the meantime the ordinary shall appoint a vicar.

Can. 1466. Par. 1. After *the presentation is admitted*, (but not before), the person lawfully presented is entitled to the canonical institution (appoinment).

Par. 2. The right to grant the canonical institution belongs to the ordinary, not the vicar-general without special mandate.

Par. 3. If several persons are presented and all are fit, the ordinary shall choose the one he believes in conscience to be the best of them.

Can. 1560. The following have necessary forum:

1. Actions of spolium, before the ordinary of the place where the thing is found.

2. Cases relative *to some benefice, although not residential*, before the ordinary of the place of the benefice.

. . . . . .

4. Cases relative to inheritance or pious legacies, before the ordinary of the place of the testator unless it is merely one for the execution of the legacy, for in that case the ordinary rules of jurisdiction govern.

(The words in parenthesis are personal explanations)

The words underlined are more pertinent to the case.

EXHIBIT "4" EVIDENCE

HOLY FATHER,

Miguel O'Doherty, Archbishop of Manila, after kissing the feet of Your Holiness, humbly says the following:

During a decade, up to the year 1916, the charges of masses founded of the Archiepiscopal Chair were not faithfully paid. After beginning to pay them sometime ago, it is very hard and almost impossible to make an exact computation thereof. Wherefore, he humbly prays that some involuntary faults in the computation thereof be cured.

Besides he prays that he be given authority to use in another pious matter the incomes which may remain after paying the annual charges.

At the audience of the Holy Father on July 3, 1925.

Our Holy Father the Pope Pious XI after hearing the statement of the undersigned, Cardinal Secretary to the Sacred Consistorial Congregation, after having made the correction with respect to the past, and maintaining in force the obligation to pay the annual charges of masses ordered in the foundation, benignly conferred upon the supplicant Right Reverend Archbishop the au-

thority to use during fifteen years the residue of the incomes in favor of the seminary and other pious matters according to his conscience and will, any other thing to the contrary, notwithstanding.

C. Card. De Lai, Bishop of Sabina,
Secretary.
Fr. Rafael
Arch. of Tesalon, Assessor.

EXHIBIT "K" EVIDENCE

No. 26677.

PLAINTIFF'S EXHIBIT "A", CIVIL CASE 1074.

WE, DR. FR. MARTIN GARCIA Y ALCOCER of the Seraphic Order of Saint Francis, through the Grace of God and of the Holy Apostolic See, Bishop of Cebu, and Apostolic Administrator of the Archdiocese of Manila, *Sede Plena.*

WHEREAS, the chaplaincy founded by Mrs. Petronila de Guzman is vacant on account of the renunciation of its last occupant Mr. Fernando Maniquis y Guzman, the capital of which consists of a building of masonry built on its own lot situated on Calle Rosario, District of Binondo; NOW, THEREFORE, and Mr. Angel Gonzalez y Guzman, boarding student of San Juan de Letran College of this City, having the qualifications and necessary requirements under the law, being a *tonsurista*, it is ordered that the present title be, as it is hereby, issued, selecting and appointing

said Mr. Angel Gonzalez y Guzman as chaplain of the said foundation and we, in the best manner and form we could do, do hereby give him collation, canonical institution and real possession *vel quasi* of the above-mentioned chaplaincy, which shall be administered as heretofore by the administrator of the funds of this Holy Archbishopric, so that, as such chaplain, he may possess and enjoy it as an ecclesiastical benefice and by perpetual title with the obligation of ordering to be said, by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the foundress, and with the understanding that every year he has to show to our Court of Chaplaincies wherein this shall be recorded, that he has discharged said masses without which requisite the rents which for the purpose may be necessary shall be withheld from him. And by virtue of Holy Obedience we order those to whom these presents may concern to have and treat the said D. Angel Gonzalez y Guzman as the beneficiary and possessor of said chaplaincy, and that they pay him well and faithfully the income which in the future the capital may produce and that which it has produced while vacant, following the dictate of their conscience, thereby relieving us, as to the compliance of the obligations appurtenant to it. Done at our Archiepiscopal Palace at Manila under our hand and seal with our coat of arms, countersigned by our undersigned Secretary of

Chamber and Government this 21st day of August 1901.

(Sgd.) FR. MARTIN?

With seal

By order of His Grace.
Sgd.) ?

His Grace confers title of collation and canonical institution to the chaplaincy founded by Mrs. Petronila de Guzman upon the *tonsurista* Mr. Angel Gonzalez y de Guzman.

THE UNDERSIGNED SECRETARY OF CHAMBER AND GOVERNMENT OF THIS ARCHBISHOPRIC.

CERTIFIES: That on this day the *tonsurista* Mr. Angel Gonzalez y de Guzman named in the preceding title appeared before the Right Reverend Bishop, Apostolic, Administrator of this Archdiocese, and while on his kness received from the hands of His Grace the collation and canonical institution of the chaplaincy founded by Mrs. Petronila de Guzman for which he has been appointed.

Manila, August 21, 1901.

(Sgd.) ILLEGIBLE.

EXHIBIT "L" EVIDENCE

UNITED STATES OF AMERICA
PHILIPPIPINE ISLANDS

Court of First Instance of Manila

ANGEL GONZALEZ,

vs.

MONS. JEREMIAS J. HARTY, etc. et al.

} Civil Case No. 10074.

DECISION

The plaintiff Angel Gonzalez claims that the defendants Mons. Jeremias J. Harty, in his capacity as Archbishop of Manila, and Mr. Thomas L. Hartigan, as administrator of the estate of the Holy Arhbishopric, should deliver to him the building of masonry situated on Calle Rosario, Binondo, Manila, on which a chaplaincy was founded as a capital in the Arhdiocese of Manila by Mrs. Petronila de Guzman, of which chaplaincy he has been in possession since June 20, 1901, together with its fruits incomes and rents at the rate of ₱650.00 per month from said date until the termination of this litigation, deducting only such amounts as the defendants may prove to have paid to plaintiff on account of said incomes and rents; and should render him an account of the management of the property during the four years prior to June 20, 1901, with interest thereon and costs.

The foregoing petition was amended in part in the plaintff's brief in the sense that he waived the delivery of the property applied for, limiting himself to asking for the payment of the incomes and the rendition of account of the administration thereof from the year 1901 until the termination of the present litigation.

There is no dispute whatever as to the fact that Mrs. Petronila de Guzman, in her will executed in the town of Binondo, Manila, on March 13, 1816 (Exhibit 5), founded a collative chaplaincy, leaving a house belonging to her and situated on Calle Rosario, Binondo, subject thereto, in order that with the income thereof the chaplain to be appointed may be supported, Esteban de Guzman legitimate son of her grandson, Mr. Jose Telesforo de Guzman, being the first to occupy the position by order of the testatrix herself. It was provided that in his default, her nearest relative should be elected, and in default of the latter, a student of San Juan de Letran College, mestizo and orphan, should be appointed. The plaintiff was the last chaplain appointed, as shown by the record, his predecessor who held the position having renounced it due to lack of vocation.

The appointment of the plaintiff dates back to August 21, 1901 (Exhibit A).

The plaintiff entered the San Carlos Seminary on September 6, 1909 and did not stay there but for a few days, having left said seminary on the 24th

of the same month and year without the permission of his superiors.

For that reason the chaplaincy was declared vacant on December 6, 1910, the same not having filled up to this date, nor anyone called to carry into effect the purpose and spirit of the foundation, to the damage of those who may have the right to said chaplaincy.

Under the date of November 15, 1920, the plaintiff received from the administration of "Obras Pias" (Pious Institution) (Exhibit 3), the sum of ₱12,500 as the net balance and in full payment of all the incomes belonging to him or which might belong to the chaplaincy of Mrs. Petronila de Guzman from October 18, 1901 to December 31st of the year 1910.

The question that presents itself is whether or not the plaintiff in his capacity as chaplain appointed by the ecclesiastical authority has the right to demand from the defendant a rendition of account of the management of the said chaplaincy, notwithstanding that he has received the net balance of all the fruits that might belong to him, as stated in the receipt above mentioned signed by him on November 15, 1910.

The receipt in question is not a liquidation nor a rendition of account, nor does the signing thereof by the plaintiff mean that the accounts were rendered to him. Every agent, such as the defendant with respect to the above mentioned house,

which has become subject to the chaplaincy founded by Mrs. Petronila de Guzman, is under obligation to render an account of his transactions, under article 1720 of the Civil Code.

As a consequence of said obligation, the defendants were under obligation to keep a book of account where they should have entered the incomes obtained from the property and the expenses made for its conservation and administration.

However, the book entitled debit and credit book pertaining to the chaplaincy founded by Mrs. Petronila de Guzman (Exhibit B), which was opened on January 5, 1863, by order of the general administrator of the Pious Institutions and Funds of the Holy Archbishopric, for the very purpose of having the entries and accounts of the chaplaincies in due shape and form, the administration of which was entrusted to him, contains entries only up to December 31, 1906, after which no more entry connected with the property whose incomes were subject to the chaplaincy in question was made.

The defendants have not presented any book of account, nor rendered any more account of the administration of the said chaplaincy, than that just mentioned, notwithstanding that according to the receipt (Exhibit 3) and the communication sent by the administrator of Pious Institutions of the Holy Archbishopric to the Right Reverend Archbishop of Manila, there were liquidated with Mr. Angel Gonzalez, plaintiff, the incomes of the chaplaincy

founded by Mrs. Petronila de Guzman from October 18, 1901, to December 31, 1910, stating in said communication that the said chaplain had received the sum of ₱12,500 without any objection whatsoever and made express waiver and complete assignment of any such other amount as may belong to him for any other reason during the period of time between the date of his collation up to the date last mentioned. This express waiver and complete assignment of any amount, which, it is said, was made by the chaplain, the plaintiff Angel Gonzalez, does not appear in any receipt issued by the latter on said date, November 15, 1910 (Exhibit 3), nor anywhere in the record.

There is, therefore, no evidence that the plaintiff has made any waiver of such amount as might belong to the chaplaincy in question, nor of the rendition of account that he now claims, for his signature on the receipt on folio 36, of October 18, 1901 for the sum of ₱3,222.67 4/100 as cash on hand, and those on folios 37 and over, 39, 40, 41, 42 and 43, as well as that on Exhibit 3, do not mean any waiver of the amounts belonging to him as balance in his favor resulting from the rendition of account that might be made by the administrator or agent after the termination of the administration of said property.

Now then, in the accounts of the years 1901, 1902, 1903, 1904, 1905 and 1906, which were closed on December 31st of each of said years, the items relative to fees paid by the defendants to the attor-

neys of the Archdiocese of Manila, which amount to the sum of ₱9,920.76 for said six years, are contested by counsel for the plaintiff in his rebuttal evidence and written memorandum, as there does not appear any professional service that any of said attorneys has rendered to the chaplaincy.

Really it cannot be explained how the Archdiocese of Manila has paid as fees of said three attorneys the sum of ₱952.98 6/8 in the year 1901; ₱1217.93 in the year 1902; ₱1550.38 in the year 1903; ₱2178.00 in the year 1904; ₱1991.00 in the year 1905; and ₱2030.47 in the year 1906, besides the salaries of the administrators and the clerks, the general expenses of administration, and Christmas gifts given to them which amounted, according to the book, to ₱4,229.63, when it does not appear from the accounts aforesaid found in the book of account that any service was ever rendered by the three attorneys of the Archdiocese of Manila or by any of them. For, said book already shows entries of amounts spent in connection with certain actions for forcible entry and detainer brought against the delinquent tenants. No agent or administrator is authorized to make such disbursements for salaries of attorneys who have not defended any suit connected with the property or the possession of the property of the chaplaincy to which it is subject, aside from the salaries of the administrator his agents and clerks.

Article 1719 of the Civil Code conclusively pro-

vides that in the performance of the agency the agent must follow the instructions of the principal, and in default thereof, must do everything that according to the nature of the business would be done by a good father of a family.

Undoubtedly in default of instruction from the plaintiff, as the party interested in the property, who, while he held the office of chaplain, did not give any to the defendants, they should have acted as a good father of a family in the matter of the payment of fees to attorneys who had not defended any suit involving the chaplaincy in question, and in that case they had no legal or moral reason for separating any amount of the incomes produced by the property under administration in order to pay said attorneys except when the latter should have had charge of the defense of some litigation instituted in connection with the property.

As, under Article 1726 of the Civil Code, an agent is responsible to the principal for such amounts belonging to the latter as might have been unduly and unlawfully used, so the defendants are under obligation to return to plaintiff the sum of ₱9,920.76.

In regard to the incomes produced by the property during the period from 1907 to 1910, no account was kept by the defendants of the administration of the chaplaincy during said period, inasmuch as the book of accounts called Debit and Cre-

dit Book (Exhibit 1) is in blank after December 31, 1906.

But both parties have agreed, as shown on page 4 of the stenographic notes, that the capital of the chaplaincy, that is the property, has been producing from January 1, 1907, an income of ₱550 per month, on account of which the plaintiff has received on November 15, 1910, only the sum of ₱12,500, according to the receipt above mentioned.

The chaplaincy having been declared vacant on December 6, 1910, it results that from January 1, 1907 to the end of December 1910, that is, for forty eight months, the property has produced ₱26,400 as income, which, after deducting the income pertaining to December, 1910, which the plaintiff is no longer entitled to receive, having ceased to be in the service of the chaplaincy founded, gives a balance of ₱25,850.

For the administration of the chaplaincy, there was expended in the year 1906 the sum of ₱958.12, as shown on page 43 of the Debit and Credit Book for salaries of agents and clerks of the administrator and general expenses, plus ₱60.00 for an equal number of masses for the intention of the foundress, that is ₱1045.12 per year, which in four years (from 1907 to 1910) make a total of ₱4,180.48, and which, if deducted from the ₱25,850, gives a balance of ₱21,669.52.

As of this amount only the sum of ₱12,500 was paid to the plaintiff, there still remains a balance

of ₱9169.52 against the defendants, which balance added to the preceding one of ₱9920.76 gives a total of ₱19,090.28.

The defendants in the capacity in which they are sued are ordered to return to plaintiff Angel Gonzalez the sum of ₱19,090.28 with the costs of the action.

Manila, P. I. June 12, 1914.

(SGd.) S. DEL ROSARIO
Judge.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

Court of First Instance of Manila
Branch III

RAUL ROGERIO GONZALEZ, etc.,
Plaintiff,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,
Defendant.

No. 26677.

DEPOSITION

In accordance with the notice given by the attorneys for the defendant of February 13, 1926, in Manila, duly served on the attorneys for the plaintiff on the 16th of the same month and year, as evidenced by the signature of said attor-

neys at the bottom of said notice attached hereto and made a part hereof, this deposition was taken in order to take the testimony of the witness, His Grace Michael J. O'Doherty, member of the defendant corporation, on the 18th of February, 1926, at 9:25 A. M., until 11:45 A. M. The deposition was taken in the Archiepiscopal Palace, No. 95, Calle Arzobispo, City of Manila, Philippine Islands.

APPEARANCES:

The Attorney Mr. A. D. Gibbs for the plaintiff; and

the Attorney Mr. F. R. Feria for the defendant.

MICHAEL J. O'DOHERTY, 51 years of age, Roman Catholic Archbishop of Manila and residing at No. 95, Calle Arzobispo, Manila, with cedula No. F-7139 issued at Manila on January 8, 1926, after being duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. FERIA:

Q. Does Your Grace know this chaplaincy founded by Mrs. Petronila de Guzman?

A. I know it exists here; but if you mean the lands, I have never seen them, I know the chaplaincy exists, because I have seen it several times in the record.

Q. Can Your Grace tell us what use was made of the incomes or part of the incomes of this chaplaincy during the time that the office of the chaplain was vacant after the last chaplain left the position?

A. After paying the stipends for masses, all the

money was used for charitable purposes, for educational purposes; I can tell the purposes for which the remaining funds were used.

Q. What are those purposes?

A. Catholic schools, we have several schools, I help a great number of catholic schools, we give a certain amount to each parish priest to pay the salaries of the teachers.

Q. Can Your Grace say what has been the custom of this Archdiocese with reference to the employment of the income of vacant chaplaincies?

Mr. GIBBS: Objection as being immaterial.

A. I found here the custom of using these funds for religious purposes, education, beneficence, charity etc. and I have done nothing more than to follow the custom which I found had been followed by my predecessor, Mons. Harty.

Q. And was that custom followed in this particular case of this chaplaincy in question?

MR. GIBBS: I object on the same ground.

A. I am sure that it was, as I have stated, I can tell this from the documents and books of account kept downstairs.

Q. Does Your Grace remember whether the parents, or some relative of Raul Rogerio Gonzalez, have applied for the position of chaplain of this chaplaincy for him?

A. Yes, I remember that they have applied for it.

Q. Can Your Grace state what Your Grace has answered to that petition right at the beginning?

A. I believe that it was in the year 1918 or 1919,—I cannot tell the exact date, but I am almost sure that it was before I went to Rome in the year 1920,—two persons presented themselves here in the name of this young

man Raul Rogerio Gonzalez and my impression is that one of those gentlemen was a relative of said youth, and the other was a lawyer friend; they came here for that purpose, to ask for his appointment as chaplain of this chaplaincy. Now, as a long time has elapsed I cannot remember the exact words, but the intention was to ask for that. As this was against the laws of the church, namely, to appoint a young man, without said person having studied enough and before he becomes a cleric, I remember that an offer was made them to educate the boy, not because he had then the right to the chaplaincy but by equity, taking into account the benefits that the church had received from his family. I, who have so much charity for others, was willing to defray the expenses of his education. I believe that my intention was not yet to send him to the seminary, in order that he should not immediately feel the strictness of the ecclesiastical life, but to the Ateneo or the San Juan de Letran College, because that would give the boy complete freedom, because we must not make priest of anybody who has no vocation for it. I was naturally agreeable to admitting him in the seminary and if after complying with the requisites of the chaplaincy, he will have the necessary qualifications, to appointing him immediately chaplain of this chaplaincy.

Q. Can Your Grace tell us whether you have had an opportunity to submit to the approval of the Holy See that custom of using the whole or part of the income of those vacant chaplaincies for other purposes?

MR. GIBBS: Objection to the question as being impertinent.

A. Yes, sir.

Q. And what action did the Holy See take in the matter?

MR. GIBBS: Objection as being impertinent.

A. The Holy See has approved that custom.

Q. Does Your Grace mean to say that there does not remain any balance from the incomes of said chaplaincy at present, or is there any remainder after making those investments?

A. At present there is but the credit of the last year of which we have not disposed as yet, that of the year 1925, because it was presented the last month, and we have not had an opportunity to dispose thereof, because the parochial schools will be opened in the month of June.

MR. FERIA: That is all.

CROSS-EXAMINATION BY MR. GIBBS.

Q. Is it true that the unipersonal corporation known as "The Roman Catholic Archbishop of Manila" claims to be the owner in fee simple of the properties numbered 210, 212 and 214 on Calle Rosario?

MR. FERIA: Objection, because the question of opposing counsel has not been the subject of the direct examination.

A. I would say yes.

Q. Do you know how long it should have been the absolute owner of the properties in question?

MR. FERIA: The same objection.

A. I believe, Mr. Gibbs, from the beginning, because the property was given to the Catholic Church and we have to defend and manage it; if the Church is not the owner, it would be without owner.

Q. Do you know whether the Torrens title of these properties was acquired before or after Your Grace was appointed archbishop?

MR. FERIA: Objection as being impertinent.

A. I cannot tell you; but it is easy to ascertain.

Q. On what date was Your Grace appointed archbishop?

A. I was appointed Archbishop of Manila on September 6, 1916, but I could not exercise my powers until I took possession of the Archdiocese of Manila, which was on December 14, 1916.

Q. So far as Your Grace knows, the permission or consent of the Gonzalez family or of any other person was not asked before the application was made for title in the name of the Roman Catholic Archbishop of Manila?

MR. FERIA: The same objection.

A. I cannot answer that; I suppose it can be ascertained from the court's file.

Q. Nor does Your Grace know if there was any opposition to the application for Torrens title?

A. I do not know.

Q. Your Grace has stated at the beginning, in one of your aswers to the questions in the direct examination by counsel for the defendant that the rents of the properties were disposed of after paying the stipends for masses, what stipends were those?

A. If I remember correctly, in this case it was ₱5.00 for each mass; but I would prefer to look up the accounts downstairs in order to see that.

Q. Your Grace has no personal knowledge of the payments of these stipends?

A. I know and I believe that I have said that it can be confirmed by referring to the books of account downstairs.

Q. Has Your Grace personal knowldge of the persons to whom those stipends for masses were paid?

A. Yes.

Q. To whom were they paid?

A. It is several years ago and it may be that they were paid to different persons in different years, we have the books of account downstairs.

Q. Your Grace cannot, without referring to the books, tell to whom the payments of those stipends were made?

A. At this time, no; but ordinarily they were paid to some priests of the diocese of Manila.

Q. Do all those stipends for masses appear in the books of account of the Roman Catholic Archbishop of Manila?

A. Yes, sir.

Q. Can those books be produced in order to see those payments?

A. I believe that there would be no difficulty.

Q. Of your own knowledge, can Your Grace tell us what amount was paid each year for masses?

A. I know that the number of masses in this chaplaincy is sixty, and five pesos were paid for each, which means three hundred pesos for masses of this year; now it may be that some years we have delivered the same to some priest of the diocese for the sum of two pesos a mass, but to ascertain it I would have to see the books; however, I can say that the biggest expense that was paid for is that of five pesos for masses, that is, three hundred pesos a year.

Q. Do the names of the priests to whom those payments for masses were made also appear in the books?

A. I suppose so, unless they were said for my intention, because they have a custom of offering masses for my intention and pay the stipend to me for the seminary and the education of young priests; now it may be that in some year, for instance, there are one hun-

dred and thirty priests in the diocese, I may have told them; these masses shall be said for my intention; I would know that the priest has said the mass, for each of them sends a statement saying: I have said those masses; but I cannot know who has said the first, who the second; but the fact is that we know that the masses were said.

Q. The only way in which Your Grace can know whether those masses were said or not is by references from the priests themselves, because Your Grace has never witnessed the masses?

A. We do not require more than this, because sometimes they send me from Antipolo three thousand masses, saying: We have received three thousand masses from devout persons; I cannot say three thousand masses; they are sent to me in order that I may take charge of them, and sometimes I send five hundred of those masses to a religious order, to the Dominican fathers, for instance. I send them five hundred pesos, in order that they should see that those masses are said, and you can see Mr. Gibbs, that it would be impossible for me to witness all those masses because that is not the custom of the Catholic Church, we have always to accept the word of a priest.

Q. And are those priests still in the Philippines?

A. I believe so, they must be, if they have not died.

Q. Your Grace cannot tell how many priests are those to whom those sixty masses were entrusted?

A. I cannot tell from memory; that is why we had better see the books of each year.

MR. GIBBS: I want it to be stated in the record that I ask for the striking out the testimony of the deponent as to the masses said by the

priests, because it is a hearsay and is not the best evidence.

MR. FERIA: We object to the petition to strike.

Q. As to the disposition of the remainder of the incomes, Your Grace has no personal knowledge of it, but is only aware of it through the books and the statements of your assistants?

A. I have a personal knowledge, because I am the one who orders. For instance, a chaplaincy whatever, I say that the remainder of ₱720 be applied to the parish priest of Bacoor, giving him ₱60 for salaries of teachers every month, that remainder is already covered; I am the one who orders the payment, because no payment even of one centavo can be made without my authorization, except the current expenses.

Q. Does there appear in writing in the books the disposition made of all the sums belonging to this chaplaincy?

A. I suppose that it must be downstairs in the books of account, because when I order something, someone goes downstairs in the office and it is complied with by the Vicar-General or by any person of my office whom I order.

Q. But what I would like to know is whether it appears in detail in the books of the Archbishopric of Manila?

A. I remember at least one year, when I put everything because this chaplaincy, as it is a chaplaincy of value, I remember very well having disposed, giving so much to such and such parish, so much to another, until I spent all the amounts of the chaplaincy, I have done so personally, writing personally.

Q. In other words, if I have understood you correctly, Your Grace means to say that these funds can be used for paying any expense of

the archbishopric?

A. Ah, no sir.

Q. I do not mean personal expenses of Your Grace but of the Church?

A. Expenses of the Church, yes, the preferential expenses for us are: Education, then charitable institutions; I believe that in conscience we can use those funds for any purpose, for any of the purposes of the Church, because all the purposes of the Church are good, we do not admit any bad purpose.

Q. Is the disposition or application of funds of chaplaincies limited by any document in writing of the Holy Father?

A. Recently a document was received from Rome; but ordinarily the chaplaincies and all of these are governed by the Canon Law.

Q. But is there any rule as to what dispositions can be made of the incomes of the chaplaincies?

A. Of course, if the chaplain is appointed, he must always receive the share belonging to him and his rights do not begin except from the time of his appointment.

MR. GIBBS: I want to be stated in the record that I have not asked the witness to give the contents of the rule of the Catholic Church, but only whether such a rule exists, and I ask that the answer of His Grace be stricken out as to the contents of the rule, because it is not the best evidence.

MR. FERIA: We object to the motion to strike, because it is an answer of His Grace to the question of the attorney for the plaintiff.

Q. Your Grace has mentioned a document received from the Holy Father, does that document have any reference to the chaplaincy in question?

A. Not in particular, but to all the chaplaincies

that are under my charge.

Q. Does Your Grace remember the name of the attorney who came in company with the relative of the applicant Raul Rogerio Gonzalez?

A. I do not remember.

Q. Nor does Your Grace know who was the supposed relative of Raul Rogerio González?

A. I do not know, but I am sure he was not the father.

Q. Was it not the mother?

A. No, they were two men.

Q. Has Your Grace made any memorandum of what happened then?

A. If I have made any memorandum then, I do not find it now; but it is very probable that I have made some.

Q. Your Grace has but a vague impression as to what took place in that interview with those two persons?

A. I have no objection to appointing him if he had the qualifications, and it is proven that he was entitled to it—it is presumed that it has to be proven—because in these cases we have to institute a proceeding before the provisor and the ecclesiastical judge will say whether or not the young man is entitled to be appointed, then we have to see the qualifications, for instance, that of being tonsured; I have no objection to his being appointed because at present we have several chaplaincies.

Q. Has Your Grace received any application from any other person for this chaplaincy?

A. None that I know of, it is the only one.

Q. But Your Grace has no other reason for doubting the fact that this applicant Raul Rogerio Gonzalez is the true heir of this chaplaincy, in other words, that he is the nearest relative, single, of the first chaplain?

MR. FERIA: Objection to the question, because it

has not been the subject of the direct examination and the witness is incompetent to answer the question.

A. I cannot answer that question until after the judgment of the provisor, I have no sufficient proof for giving an opinion.

Q. Was it not upon the hypothesis that he was the heir of this chaplaincy that Your Grace offered to educate him?

A. Not as a matter of right, but as a matter of equity, and supposing that he was what he claims to be, I did not mind it, because I educate many boys and girls of the diocese, and for sufficient reason I would have educated this boy, although nothing of this chaplaincy be involved.

Q. But it was the supposition of Your Grace that he was the true heir of the chaplaincy and for that reason Your Grace offered to educate him?

A. I believe so, because this was a peculiarity of him which distinguished him from the other boys of the diocese.

Q. Your Grace is familiar with the letters addressed to Your Grace by the signers, and which are attached to the complaint in this case; is that true?

MR. FERIA: I object to the question because it has not been the subject of the direct examination, besides it is vague and does not specify what documents.

MR. GIBBS: I am going to add something to the question.

Q. I mean Exhibits B, C, D, and E which are attached to the complaint.

MR. FERIA: I object to the question, because what the attorney seeks to prove is a new fact which has not been the subject of the direct examination, unless he wants to make this wit-

ness his or presents him afterwards.

A. Yes, sir; I remember this letter addressed to me by the Parish Priest of Baliwag (referring to Exhibit 'B'); I remember very well also this letter (indicating Exhibit 'C').

Q. Your Grace knows these two priests very well who signed Exhibits 'B' and 'C' attached to the complaint?

A. Very well.

Q. And what about the letter Exhibit 'D'?

MR. FERIA: The same objection.

A. I remember that letter.

Q. Your Grace knows Victor Enrile?

A. Yes, sir, he is a priest of the Archdiocese of Manila.

Q. And Exhibit 'E', do you know it also?

A. Also.

Q. Do you know the signer of that?

A. Yes, sir.

Q. Who is he?

A. He is now the parish priest of Tanza, Cavite.

Q. Does Your Grace have any confidence on those priests?

MR. FERIA: I object to the question for the reasons already given, and, besides, what those priests say in the letter cannot bind His Grace, the Archbishop.

A. I have confidence on those priests, although in this case I had to reprimand them for not having minded their own business.

Q. Do you remember having received the letter of February 25, 1922, from Father Jose Bustamante addressed to Your Grace, a copy of which is marked Exhibit B and is attached to the Stipulation of Facts?

MR. FERIA: I object to the question for the reason that the fact referred to has not been the subject of the direct examination.

A. I remember its presentation.

Q. Is this Jose Bustamante a priest of your confidence?

A. Very much, he is the Vicar-General.

Q. If I have understood you correctly, Your Grace has said that your intention was not to educate Raul Rogerio Gonzalez in theology but also to give him a general education?

A. No, it was to prepare him for theology, if he had the vocation.

Q. From the answer of Your Grace, I have had the impression that you have a very vague idea about the interview that you had with those two persons who came here on behalf of this young man.

A. The fact itself is very vivid, as to the actual words, naturally it is very vague.

Q. What was the proposition that Your Grace made to those two persons?

A. According to my impression, I denied the appointment; but at the same time told them that I was willing to co-operate so as to put him in a position to choose the eclesiastical state, if he had a vocation therefor.

Q. Has Your Grace offered to pay them any part of the incomes of this chaplaincy?

A. Absolutely nothing, even one peso; my intention was to pay the colleges that young man might enter.

Q. Had those two persons, who have seen Your Grace, shown their representative capacity in order to ask for what they have applied for?

A. I believe not, I asked one of the two: Are you the father? And as I remember, he answered me not. I asked the other gentleman, and so as far as I remember, he was a lawyer and friend of the family, although I suppose that they came as representatives, and one of them said: We came here not with the intention of suing you, but for the purpose of

settling the matter amicably.

Q. So that Your Grace has no knowledge as to whether or not they were true representatives of the applicant?

A. It did not occur to me to ask that, nor did I have any reason to doubt it, and I do not believe that they would waste time here with me if they were not representatives.

Q. Has Your Grace made any offer in writing to educate this young man?

A. I was trying to remember that, but I cannot remember it, nor do I dare say so; for this reason if the other party offers a document signed by me, I would not be surprised.

Q. Does Your Grace know the mother of the applicant?

A. I made the pastoral visit twice in Baliwag and it may be that I have seen her, or that someone has introduced her to me; but at this time I cannot tell whether I know her or not.

Q. Has Your Grace ever talked to her or to the father of the applicant about this appointment as chaplain?

A. I believe not.

Q. But could that interview or conversation have taken place without your remembering it?

A. Very well; I confirmed three thousand children in Baliwag, I receive thousands of visitors in the pastoral visit, and it might be.

MR. GIBBS: In making this question to Your Grace, I want to state that I came here without having had an opportunity to talk to the parents of the boy, and that is why I am making these questions, because I want to know from Your Grace if the parents of the boy, or any of them, have ever seen Your Grace here in Manila about the appointment of their child.

A. I believe not, the only thing that I remember is the visit of those two persons who came

here.

Q. But due to your being very busy, Your Grace might have had that interview and conversation with the parents of the boy without remembering it?

A. A formal interview, I believe not. Now if it were for two or three minutes in order to greet me, it may be; but a formal one, dealing with a matter so important as this, no; I believe I have not had.

Q. But could Your Grace have had similar interview or conversation in Baliwag without remembering it?

A. I answer in the same way, a formal conversation dealing with a matter so important as this, we did not have; a conversation on the corridor when I was going to the church, it was possible; but I do not remember having ever seen the mother or the father of the applicant.

Q. Does Your Grace remember what answers those two persons or any of them gave as to your proposition to educate the applicant?

A. I do not remember it at this time, but my impression is that the conversation was fine, which ended to the satisfaction of the two parties.

Q. Has Your Grace made an effort to ascertain who that attorney was?

A. Yes, I asked some employees here whether they remembered that interview and they answered not,—it was a visit as any other.

Q. Was there any person present at that conversation?

A. I believe not, there was no other person than the three of us.

MR. GIBBS: That is all.

REDIRECT EXAMINATION BY MR. FERIA:

Q. Your Grace has testified that some of those

masses of this chaplaincy were said by priests for the intention of Your Grace; what does Your Grace mean by that?

A. For instance, if a father of a family comes to me and asks me to say a mass for the recovery of the health of a child of his who is sick; as I cannot say all the masses charged to me, I call a priest and give him the same amount and tell him "Father please say the mass for my intention"; naturally my intention is that of the father of a family who has paid me the amount.

Q. And in this particular case, when Your Grace says that some masses be said by priests to the intention of Your Grace, what do you mean by that?

MR. GIBBS:—Objection, as being immaterial.

A. My intention was to comply with the purposes of the chaplaincy.

Q. When Your Grace orders some priest to say masses for your intention for some purpose and those priests reported to Your Grace that they had complied with your intention according to usage, customs and laws of the church with that information?

MR. GIBBS:—Objection, as being incompetent and impertinent.

A. That is absolutely the ordinary way of the Church of obtaining the saying of masses."

Q. Who keeps at present the books where those expenses were entered, or that employment of the incomes of this chaplaincy here in the archbishopric?

A. Mr. Barahona.

Q. Could Your Grace have had any conversation —if Your Grace has ever had any with the parents of the plaintiff about the appointment of the latter as chaplain of this chaplaincy without Your Grace remembering it?

A. I have never thought of appointing him chap-

plain until he should have the requisites.

Q. My question is: Your Grace has stated that Your Grace might have had a short conversation or greeting with the parents of the plaintiff, could Your Grace have had on that occasion conversation with the parents about the appointment or the right of the plaintiff to be appointed chaplain of this chaplaincy?

A. I believe not, because I would retain the impression or would remember it, being an important matter.

Q. Your Grace, please look at this document which for the purpose of identification is marked Exhibit 1 of the deposition of Your Grace, and tell us if this document is the document of the Holy See Your Grace referred to in your answer to Mr. Gibbs.

A. It is the document.

Q. Does Your Grace know this signature?

A. Yes, sir.

Q. Whose is it?

A. Of Cardinal C. de Lai.

Q. What was and is the Cardinal de Lai who signs here of the Consistorial Congregation?

A. Secretary.

Q. What is the Consistorial Congregation?

A. In general, the Consistorial Congregation is the immediate authority of all the bishops of the world who are in the organized part of the Catholic world, just as the Propaganda of the Faith is above the non-Christian countries,— it is our immediate authority.

Q. What is the relation between the Consistorial Congregation and the Holy See?

A. The Congregation is the body that governs all the bishops and the matters relative to their dioceses in the name of the Holy Father.

MR. FERIA: That is all.

ADDITIONAL CROSS-EXAMINATION BY MR. GIBBS:

Q. Is it true, Your Grace, that these properties pertaining to the chaplaincy in question pay more rent than any other chaplaincy in the Philippine Islands?

MR. FERIA: I object to the question, being impertinent and immaterial, and besides, it has not been the subject of the direct examination.

A. It is not the largest, far from it.

Q. Was this letter Exhibit 1 of the deposition of Your Grace written in answer to a letter of Your Grace on the occasion of the present litigation?

A. No, it was written in answer to a general report of my administration here.

Q. Can Your Grace produce said report here, for which Exhibit 1 of the deposition of Your Grace was written?

A. I believe yes, we have a copy. I can further add: although it was not written in connection with this chaplaincy, yet it appears in my report, among others.

Q. Does Your Grace know the names of the persons in whose behalf the masses must be said according to the will of the deceased Petronila de Guzman?

A. As I have many chaplaincies, I cannot remember the conditions (terms) of each chaplaincy, but I know it because I have read it once, I don't remember it now.

Q. Is it necessary that the priest who says the mass should have knowledge of the names of the persons in whose favor the mass is said?

A. It is not necessary.

Q. Therefore, the priests to whom Your Grace has entrusted your intention with reference to the masses, in order to comply with the will,

had no knowledge of the persons in whose favor they ought to say the masses?

A. Ordinarily that is not material.

Q. So far as Your Grace knows, did any of those priests know the names of the persons for whom the masses ought to be said?

A. I believe not, I don't think it necessary.

Q. Therefore, they are general masses said in favor of all the Catholics?

A. No; we have a record of the masses and there is entered: "Sixty masses for the intentions of chaplaincy No. 69;" it appears there, and then when the day comes, those masses are said.

Q. Is it compulsory on the part of Your Grace to pay those priests who say those masses?

A. It would be my obligation, if those priests would give us their stipends in favor of the seminary; if a priest, in order to help the native clergy, says: I say so many masses, but I do not want to collect the stipends then the stipends are given to the seminary.

Q. Then in practice, as a matter of fact, no payment or delivery of those stipends is made, but they are kept for the seminary.

A. We would have then to study the disposition made each year; but I believe that generally that is what was done.

Q. That is to say, that the priests have not accepted anything in payment of their services for saying the masses?

MR. FERIA: Objection, as being immaterial.

A. Some years yes, some years not; we would have the books of account of each year.

Q. Your Grace cannot tell without examining the books, if in reality any stipend was paid to any priest for saying the mass in connection with this chaplaincy, can Your Grace tell it?

A. At this time, I cannot tell.

MR. GIBBS: That is all.

ADDITIONAL REDIRECT EXAMINATION BY MR. FERIA:

Q. But can Your Grace tell us whether those masses were ordered said or not?

MR. GIBBS: Objection as being impertinent, incompetent and not the best evidence.

A. Yes, at least those masses until this date, in my time, have always been said.

Q. Before entering on the books the payment of those stipends, does Your Grace know or not the payment before it is entered?

A. I suppose so, because I have given the order, and besides I have no reason to doubt at this time, I do not remember; but I have not the slightest reason for doubting that said money has always been applied to the seminary or perhaps some years was paid to priests.

MR. GIBBS: We move that the answer be stricken out being a mere supposition of His Grace.

Q. When some payment of money is made, who makes the payment for those investments?

A. Ordinarily I myself approve all the amounts given to the seminary and in my absence, for instance, last year, when I went to Rome, the Vicar-General who has the same personality as the Archbishop.

Q. Has Your Grace been at Rome the last time?

A. Yes, sir.

Q. Can Your Grace tell us whether or not Your Grace has had any conversation, besides this letter or communication sent to Rome, with any ecclesiastical authority which was the subject of the approval contained in Exhibit 1?

MR. GIBBS: I object as being impertinent and incompetent.

A. I have had conversation with Cardinal de Lai about this matter.

Q. Was it before or after the writing and receipt of Exhibit 1 of the deposition when that conversation took place?

MR. GIBBS: The same objection.

A. After having presented the letter, but before the writing and receipt of Exhibit 1 of the deposition.

MR. FERIA: That is all.

FURTHER CROSS-EXAMINATION BY MR. GIBBS:

Q. How many chaplaincies has Your Grace under your administration in the Philippine Islands?

A. There are about 190.

Q. And for that reason, it is impossible for Your Grace to remember the particular circumstances of each of those chaplaincies?

A. I would at least say that it is very difficult.

Q Your Grace acknowledges that the rents of the properties Nos. 210, 212 and 214 on Calle Rosario belong to the chaplaincy in question?

MR. FERIA: I object to the question because the witness has already declared that he has not seen the properties.

A. I have not seen the properties and I have to rely upon the books as to the property belonging to the chaplaincy.

Q. Without reference to your having seen the properties or not Your Grace acknowledges that these properties belong to the chaplaincy in question?

A. Yes, sir; there is no question about that.

MR. GIBBS: That is all.

(SGD.) MICHAEL J. O'DOHERTY

The taking of the deposition was terminated at 11:45 A. M.

I certify that the foregoing deposition is a correct transcript of the stenographic notes taken by

me during the taking of the deposition.

(SGD.) JOSE LEOGARDO
Official Stenographer.

I hereby certify that the foregoing questions and answers constitute the deposition of the witness, His Grace Michael J. O'Doherty, taken before me on February 18, 1926, at 9:25 A. M., in the Archiepiscopal Palace, No. 95, Calle Arzobispo, City of Manila, Philippine Islands, the witness having first being sworn in accordance with the law; that certain questions and answers were taken directly by the stenographer Jose Leogardo in shorthand, and afterwards transcribed and read by the witness, His Grace Michael J. O'Doherty, who admits that the answers above transcribed are the same ones given by him to the question that were put to him; after which said witness has subscribed and sworn to said deposition before me this 25th day of February, 1926, in the City of Manila, Philippine Islands.

(SGD.) MARCELO P. KARAAN
Notary Public
Until December 31, 1926.

Not. Reg. No. 74.
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Book 1, Series of 1926.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS.

In the Court of First Instance of Manila

RAUL ROGERIO GONZALEZ, by his guardian *ad litem* ADELAIDA GONZALEZ,

Plaintiff,

versus

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,

Defendant.

Civil No. 26,677.

January 27, 1926.

Before the Hon. Geo. R. Harvey, Judge.

APPEARANCES

Attorney A. D. Gibbs, for the plaintiff, and

Attorney Felicisimo R. Feria, for the defendant.

MR. FERIA: Before hearing this case, counsel for the defendant begs leave of this Court to be allowed to amend his answer and to allege a special defense which was not incorporated in the same. The first amendment which we would like to make is to change the number of the Canon of Derecho Canonico 1148 which appears in the third special defense to 1465, that is, that the words Canon 1465

in the sixth line of the third special defense be substituted instead of 1148 which was erroneously alleged in the said special defense. The other amendment consists in the insertion, after the word "case" in the last line of page 3 of the answer and before the phrase "has disposed", of the following: "following the custom in the Archidiocesis of Manila regarding the use of the benefits of vacant chaplaincies." And as a last special defense, we beg to be allowed to allege the following: that the defendant, in view of the fact that plaintiff does not possess the qualifications required by the Canon Law to be appointed chaplain, has offered to defray his expenses, as a mere gift, and for the account of the proceeds of the chaplaincies, while studying in a seminary until he attains the qualifications required to be appointed chaplain, and that plaintiff, or his parents, refused to accept this offer.

MR. GIBBS (to Mr. Feria): I would like to know why you did not make this proposed amendment prior to the date of the hearing of this case.

MR. FERIA: Because I was not sufficiently acquainted with the facts.

COURT: Mr. Feria is directed to file another answer including all these amendments.

FERNANDO MANIQUIS, 55 years of age, married, lawyer, residing at 724 Misericordia, Sta. Cruz, Manila, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS: Do you know the chaplaincy in question?

A Yes, sir.

Q Please state to the Court whether or not you are the same Fernando Maniquis y Guzman who was the fourth chaplain in the chaplaincy in question.

A Yes, sir.

Q Do you know Raul Rogerio Gonzalez?

A Yes, sir.

Q How long have you known him?

A Since he was born, because he is my nephew.

Q Do you know his father, Angel Gonzalez y Guzman?

MR. FERIA: The question is leading.

COURT: Objection overruled.

MR. FERIA: Exception.

A Yes, sir, he is my cousin.

Q Do you know the mother of Raul Rogerio Gonzalez?

A Yes, sir.

Q Do you know how many children they have?

A As I understand it, they have three.

Q Do you know who is the eldest?

A Raul.

Q Please state whether or not you know if Raul Rogerio Gonzalez is the nearest male descendant of the first chaplain, Esteban de Guzman.

A At present, Raul is the nearest relative, in the same degree as my children.

Q In referring to the nearest male descendant, I meant the nearest unmarried male descendant.

A As I said before, he is Raul Rogerio Gonzalez who has the same degree of relationship as my children.

Q Please state to the Court if your children, or any of them, desire to be appointed chaplain

in this chaplaincy.

MR. FERIA: I object to the question because witness is incompetent to answer the same.

COURT: Objection sustained.

MR. GIBBS: Exception.

Q How old are your children?

A My eldest son is already fourteen years of age, while the youngest is about eleven years.

Q Do you know whether they are candidates to the position?

A No, sir.

Q Are they candidates?

A No, sir, and if they are, as their father I waive it.

MR. FERIA: I move that the answer be stricken from the records because witness is not competent to testify to such fact.

COURT: Motion denied.

MR. FERIA: Exception.

Q Do you know whether plaintiff is smart and intelligent?

MR. FERIA: I object to the question because it is leading.

COURT: Objection sustained.

MR. GIBBS: Exception.

Q Have you had any occasion to speak to the plaintiff?

A Yes, sir.

Q Do you know his degree of intelligence?

A From what I have seen, the boy is intelligent.

Q Do you know how old is the plaintiff?

A In my opinion, he is about thirteen or fourteen, years of age.

Q Do you know whether this boy is inclined to follow the priesthood?

MR. FERIA: Objected to as leading.

COURT: Objection sustained.

MR. GIBBS: Exception.

Q Do you know what is the attitude of plaintiff towards his future career?

A According to my personal observation, and on the occasions I went to Baliwag, I saw him frequent the church in the afternoon.

Q Do you know of any reason why plaintiff would not be fit to be a priest?

MR. FERIA: I object to the question because witness is incompetent to testify to this fact because it has not been shown that he is qualified to pass upon what conditions are required in order that one may be a priest.

COURT: Objection sustained.

MR. GIBBS: Exception.

Q How long were you a chaplain in the chaplaincy in question?

A I cannot state exactly now, but I think it was for five years more or less.

Q How old were you when you occupied a position in the chaplaincy?

A I cannot also state exactly but I was then still young and it was during the Spanish regime. I was then studying in Letran College.

Q While you were studying to be a priest, did you know what were the conditions necessary to be a priest?

A Before, like my other companions in Letran, nothing was required to be a priest except to study.

Q Do you know what subjects were studied to prepare for the pristhood?

A From what I knew, the first chaplains did not know anything except the Christian doctrine. That was the only thing needed to be known when I was tonsured.

Q Do you know what were the requirements regarding the moral qualifications of the applicant?

A It was necessary that he be of good moral character.

Q Do you know what is the moral character and the conduct of plaintiff?

A According to personal observation, they are good.

Q From what you know of the plaintiff, can you state whether plaintiff has the necessary ability to learn what is required for the priesthood?

MR. FERIA: The same objection, because witness, testifying about the requirements to be chaplain, merely stated that from what he knows, it was necessary to know the Christian doctrine, and he has not as yet said anything about the intellectual requirements to be a priest.

COURT: Objection sustained.

MR. GIBBS: Exception.

Q Do you know the intellectual requirements to be a chaplain?

A Please make the question clearer.

Q I mean whether plaintiff possesses intellectual qualifications, if he is intelligent enough to be a chaplain.

MR. FERIA: The same objection, because the question assumes a fact not proven.

COURT: Objection sustained.

MR. GIBBS: Exception.

Q Do you know the degree of intelligence of plaintiff?

A Personally, I do.

Q Do you know whether he possesses a sufficient degree of intelligence to be a chaplain?

MR. FERIA: I object on the same ground.

COURT: Objection sustained.

MR. GIBBS: Exception.

Q Do you know the degree of intelligence required in order to be a chaplain?

A When I applied for the chaplaincy, I was not required to possess any special qualifications

except to know the Christian doctrine.

Q Judging from the degree of intelligence required at the time you were appointed fourth chaplain in the chaplaincy in question, please state to the Court if you know whether plaintiff Raul Rogerio Gonzalez possesses the necessary degree of intelligence to be a chaplain.

A I think that Raul Rogerio Gonzalez has a degree of intelligence higher than those who have been chaplains.

Q Please answer the question.

A I think that he has.

Q Please state to the Court whether you are already a priest at the time you were appointed fourth chaplain of the chaplaincy in question.

A No, sir.

Q Please state to the Court whether you received all the proceeds of the chaplaincy in question from the time you were appointed.

A All material benefits?

Q Yes.

A You must understand, Mr. Gibbs, that when I was appointed chaplain the building was burned, that is why I did not receive the rents from it. Nothwithstanding this, deceased Cayetano Arellano, who was then the administrator and the counsellor of the Church, gave me all the expenses for my studies, education and support in the seminary as chaplain.

Q Do you know the family tree of the ascendants of Esteban de Guzman the first chaplain?

MR. FERIA: Objected to as leading.

MR. GIBBS: I withdraw the question. That is all.

CROSS-EXAMINATION BY

MR. FERIA: Do you know all the relatives of the first chaplain, Esteban de Guzman?

A I do not know them personally but I know them by their names.

Q Do you by name each and every one of the relatives of Esteban de Guzman?

A I do not know personally each and every one of his relatives, but I know their names because I read them in the family tree with reference to this chaplaincy.

Q Who prepared that family tree which you read?

A I saw it in the possession of my former attorneys.

Q Do you know the relatives of the founder of this chaplaincy Petronila de Guzman?

A I do not know all of them.

Q If you had not been shown that family tree by the attorneys mentioned by you, will you be able to state if you know each and every one of the relatives of the first chaplain, Esteban de Guzman?

A No, sir, I will not.

Q So that when you stated that plaintiff Raul Rogerio Gonzalez is the nearest relative of Esteban de Guzman, in the same degree as your children, you know that because you were shown the family tree by the attorneys in this case.

A These gentlemen were not my attorneys then.

Q Was it your attorney then who showed it to you?

A Yes, sir.

Q But without the family tree, would you not be able to state who are the nearest relatives of Esteban de Guzman?

A In view of the fact that I am the fourth chaplain, the fifth or the children of the latter are the only nearest relatives of Esteban de Guzman.

Q Answer the question.

A I want that answer to be of record.

Q You, of your own knowledge, without seeing family tree shown to you by your attorneys, will not be able to state to the Court if plaintiff, Raul Rogerio Gonzalez, is the nearest relative in the same degree as your children, of the first chaplain, Esteban de Guzman, is this not so?

A Of course, due to the period of time which has already elapsed.

MR. GIBBS: I would like to know whether counsel for defendant will deny that plaintiif is the nearest relative of the first chaplain.

MR. FERIA: We will see that later.

Q Where do you live? Is it not true that you live here in Manila?

A Yes, sir.

Q Is it not true that for the past thirty years you have been residing in Manila?

A Yes, sir.

Q Is it not true that this boy, the plaintiff in this case, resided and is still residing in Bulacan?

A In Baliuag, province of Bulacan.

Q And that he never resided here in Manila?

A They come here and I go there. When they come here, they live in my house, and when I go to Baliuag, I live with them.

Q How many times have you been in Baliuag, in their house, these last ten years?

A I cannot state exactly. At least, during all the holdings in Baliuag I was there, but I cannot state exactly the number of times I have been there.

Q Is it not true that you went there only once a year?

A No, sir.

Q How often did you go there?

A I cannot state exactly.

Q Is it not true that you went to Baliuag but did not stay in their house?

A No, sir.

Q How long did you use to stay in the house of plaintiff's parents every time you went there?

A At most one day because he has other brothers and I would stay one day with one of them, another day with another of them, and so on. But when I was still single, I used to live there longer.

Q When was the last time you were in the house of plaintiff's parents in Baliuag?

A Last year, when the town *fiesta* was held.

Q How many times have you been in the house of plaintiff's parents last year?

A Last year I was there once, during the holidays there.

Q Is it not true that you did not stay long in that house because you had to visit your other relatives?

A That is why I went there once last year, as I said before.

Q How many times have you been in the house of plaintiff's parents the year before last?

A I went there but I do not remember how many times.

Q Did you go there more than once, in that year?

A I cannot state exactly.

Q Therefore you do not remember?

A I cannot remember.

Q You cannot also remember how many times you have been in the house of plaintiff's parents in 1923?

A Of course I cannot.

Q Also the year prior to that year?

A No.

Q You do not also remember with whom you spoke whenever you stayed in the house of plaintiff's relatives?

A His father is my cousin, and I spoke to him and also to his wife.

Q Do you not remember other persons?

A I cannot remember. If I were to ask you the

same question you would not also be able to remember.

Q Have you ever met the plaintiff's parents here in Manila before this time?

A Plaintiff's father was in my house recently.

Q Has plaintiff Raul Rogerio Gonzalez ever been in your house?

A If I remember correctly, when his grandmother died he went to my house. I cannot remember.

Q In what year did his grandmother die?

A The year before last.

Q Did the plaintiff go to your house the year his grandmother died?

A Yes, sir.

Q Before his grandmother died, has he ever been in your house?

A He came to Manila once in a while.

Q Prior to the death of his grandmother, when was the last time that plaintiff went to your house in Manila?

A I cannot state exactly because they would arrive unexpectedly and being my relatives I would not pay attention to that, and the same would happen when they left.

Q Do you not remember how many times plaintiff went to your house prior to the death of his grandmother?

A I cannot state exactly how many times, before or after the death of his grandmother.

Q You cannot also remember how many times plaintiff went to your house before his grandmother died?

A Did I not tell you before that I cannot, before or after?

Q My question does not refer to the date when plaintiff went to your house but to the number of times.

A I have already told you that I cannot state

exactly the dates and number of times, because they are our relatives and they come and go when they want, and I will not trouble myself about their coming and going.

Q So that you do not remember anything about it?

A No sir.

Q Do you remember any conversation you had with plaintiff's father on any occasion he went to your house?

A We always speak to each other whenever we meet.

Q Do you remember of what you talked about?

A I do not.

Q Have you ever talked with plaintiff in your house before the death of his grandmother?

A I have, and whenever I would meet him I would say to him: "How are you, son?"

Q Answer the question, whether you spoke to him or not.

A I said: "How are you, son?" and nothing else.

Q You stated that you saw plaintiff go to church in the afternoons. To what church?

A In the church in Baliwag.

Q How many times did you see him?

A At the times I went to Baliwag I saw him go to the church there. I also saw him in the churchyard.

Q Then you saw plaintiff play in the church yard?

A Yes, sir, they played there with the other boys.

Q Is it not true that plaintiff did not go to church but only played in the yard with the other boys?

A I saw him enter and of course he also played with the other boys in the yard.

Q Is it not true that when you were appointed chaplain you were already tonsured?

A No, sir.

Q Did you not have a tonsure?

A I was a student at Letran. I was not tonsured.

Q Is it not true that the allowance given you by the deceased Cayetano Arellano for your education and support in Letran College was taken from the funds of the church and not from the chaplaincy becuase no rents could be obtained from the latter due to the fact that the house was burned?

A I cannot say whether it came from the church funds because long before the date when the house was burned it was already giving rents.

Q Answer the question.

A How can I answer the question when I do not know?

Q The question was whether or not you knew about that fact, and state if you know it.

A I cannot state.

Q You also stated that your companions knew only the Christian doctrine. Is that true?

A That is what I have been told. How can I know when so many years have already elapsed?

MR. FERIA: I move that the testimony of this witness with reference to his knowledge that the former chaplains were only required to know the Chirstian doctrine be stricken from the records because it is hearsay.

COURT: The Court will not take into account hearsay evidence.

Q You stated, in answer to a question whether or not you knew the degree of intelligence required to be a priest, that nothing was required to be a priest. Is this true?

A Nothing was required to be a chaplain, not a priest, because as I understand it, this chaplaincy is one of blood, that is, that all the relatives are the ones to receive the benefits derived from the property belonging to the chaplaincy.

MR. FERIA: I move that the answer be striken

from the record as it does not answer the question.

COURT: Motion denied.

MR. FERIA: Exception.

Q How do you know that nothing was required to be a chaplain in this chaplaincy?

A Nothing was required of some of my companions and chaplains. Some were only in the second year and others in the third, but they must all be of good conduct and of good moral character.

Q Do you mean to say that according to you no conditions were required for this chaplaincy, basing your opinion solely and exclusively on the fact that the previous chaplains were not required any qualification?

A Yes, nothing was required of them.

Q But you base your opinion only on the fact testified to by you that the previous chaplains were not required any qualification to be appointed as such.

A Yes, sir, because nothing was required of them.

Q How do you know that the previous chaplains finished only the second year?

A I did not say that they finished only the second year.

Q How do you know that the chaplain succeeding the first chaplain, Esteban de Guzman, did not possess any qualification, that is, that no qualification was required of him to be chaplain?

A Because from what I have learned, he was a youngster and he received the benefits.

Q You knew that thru the information of others?

A Thru the information of my attorneys who wanted me appointed chaplain.

MR. FERIA: I move that the answer of the witness be stricken from the record because it is hearsay.

COURT: Hearsay evidence will not be considered.

Q In other words, is it not true that you know that your predecessors were not required any qualifications to be chaplain because other persons told you so because personally you do not do not know this fact?

A Of course.

MR. FERIA: I move that the testimony of this witness regarding this matter be striken from the record because it is hearsay.

COURT: Hearsay evidence will not be considered.

Q Did you state that plaintiff Raul Rogerio Gonzalez has the same degree of intelligence as the other chaplain appointed to this chaplaincy?

A Yes, sir.

Q Do you know the degree of intelligence of each and every one of all the chaplains appointed?

A According to my observation, plaintiff is better qualified than the other chaplains because he received better education than these because they knew nothing except the Christian doctrine.

Q Is not that an information which you have received from others?

A I cannot say, because of the time elapsed.

MR. FERIA: I move that the testimony of this witness with reference to the degree of intelligence of this plaintiff compared with that of the previous chaplains of this chaplaincy, be stricken from the record because it is hearsy.

MR. GIBBS: I object to the motion because this case involves a chaplaincy which dates as far back as 1816 and there cannot be a witness who may have personal knowledge of the facts which took place before the birth of this witness, and he must necessarily testify on hearsay as regards facts which took place before he was born, and we are entitled to adduce this

proof, specially if it must be taken into account that defendant is the only one who can have, or has any record regarding this chaplaincy.

MR. FERIA: There is no rule of evidence by which this proof can be admitted.

COURT: In view of the statements of counsel for the plaintiff to the effect that this witness cannot testify as regards the degree of intelligence of this plaintiff and of the chaplains whom he has known, motion granted.

MR. GIBBS: Exception. I would like to state that my reply to the motion of the defendant is, not that witness is not qualified to testify about the degree of intelligence of plaintiff, but that he can not testify of his own knowledge as regards the degree of intelligence of the chaplains who lived and died before he was born.

Q Is it not true that you stated here that plaintiff Raul Rogerio Gonzalez is of good moral character because you were so informed by his parents?

MR. GIBBS: I object to the question. The stenographic notes are the best evidence of what witness has testified to. I would like to call the attention of the Court to the fact that counsel for defendant, in making reference to the testimony of the witness in direct examination, always changes it.

MR. FERIA: In reply to that, I would like to state that counsel's insinuation is not true.

COURT: Objection sustained.

MR. FERIA: Exception.

Q Did you state that plaintiff Raul Rogerio Gonzalez is of good conduct?

A I did, according to my personal observation.

Q What conduct did you observe from the plaintiff to make you state that he is of good conduct?

A He is studious. Every time I went there, I saw him, as I said, playing in the church yard and then go in the church. That shows that he is a boy of good conduct.

Q Is it not true that you testified thus because you saw him enter the church and play in the yard with other boys?

A Yes, sir.

Q And just because of that fact, that you saw this boy enter the church and play with other boys in the church yard, you assert that he is of good conduct?

A Yes, sir. I conclude, from my personal observation, that he is of good conduct because had he been another boy he would play elsewhere, in the public square, for example.

MR. FERIA: That is all.

RAUL ROGERIO GONZALEZ, who will be 14 years of age on September 16 of this year, residing in Baliwag, Bulacan, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS: What is your father's name?

A Angel Gonzalez.

Q And your mother's name?

A Adelaida Gonzalez.

Q Do you go to school?

A Yes, sir.

Q In what grade are you?

A In the sixth grade.

Q What subjects do you study in the sixth grade?

A Arithmetic, geography, spelling, phonics, conversation, English, and good manners.

Q Who is your teacher in the sixth grade?

A Mr. Claudio Borja.

Q Do you obey your parents?

MR. FERIA: The question is leading.

COURT: Objection sustained.
MR. GIBBS: Exception.
Q State whether or not you obey your parents.
A I do.
Q What do you want to be, as regards your future career?
A Yes, sir.
Q What do you want to be?
A I want to be an archbishop.
Q Do you want to be a priest before you become an archbishop?
A Yes, sir, I want to be a priest first.
Q Please state whether or not you want to study so as to qualify as a priest.
A Yes, sir
Q Do you know whether your parents will be able to support you while preparing for the priesthood?
MR. FERIA: Objection to, witness is incompetent to testify about that.
COURT: Objection overruled.
MR. FERIA: Exception.
A My parents are poor.
MR. GIBBS: That is all.

CROSS-EXAMINATON BY

MR. FERIA: Is it not true that you would prefer to get married when you grow up?
A No, sir.
Q Do you know what a priest is?
A No, sir.
Q Is it not true that you do not know what property your parents have?
A They have nothing that I know of.
Q Is it not true that your parents have property of which you are not aware?
A I think that they have none.
Q Did you ask your parents about what property they have?
A No, sir.
Q Why do you say that they have no property?

A That is what I know and also because they have nothing with which to spend for me.
Q Why do you know that they have nothing to spend for you?
A Because they can hardly buy my clothing. The clothing I have was purchased by my aunt.
Q Is it not true that your parents did not buy clothing for you because your aunt bought it for you?
A They did not buy any clothing for me because the had no money.
Q Why do you know that they have no money?
A Because they cannot buy what I need most.
Q What is it that you need most which they cannot buy?
A Toys, for example, and the things I need in school.
Q Did you ask your parents to buy you toys?
A Yes, sir.
Q When?
A Long ago.
Q Two years ago?
A Not quite.
Q More than a year ago?
A Yes, sir.
Q What toys did you ask your parents to buy for you?
MR. GIBBS: That is immaterial.
COURT: Objection sustained.
MR. FERIA: Exception.
Q Is it not true that when you asked your parents to buy you toys, your parents did not give you any because you did not obey them sometimes?
A No, sir, I always obeyed them.
Q Is it not true that you were spanked by them?
A Yes, sir.
Q Is it not true that your parents often spanked you?
A No, sir, very rarely.
Q Is it not true that you were spanked by your parents at least once a month?

A Sometimes not even once a month.
Q But sometimes more than once a month?
A No, sir.
Q Do you know what training is needed to be a priest?
A Yes, sir.
Q What?
A To say mass.
MR. FERIA: That is all.

RE-DIRECT EXAMINATION BY

MR. GIBBS: Do you know what subjects you must study in order to prepare for the chaplaincy?
MR. FERIA: I object to the question because it is based on facts not established.
COURT: Objection overruled.
A I know of only one.
A What is it?
A Theology.
MR. GIBBS: That is all.

FURTHER CROSS-EXAMINATION BY

MR. FERIA: Do you know what theology is?
A Not until now.
Q Is theology a man, a person?
A I do not know.
O Is theology not money?
A No, sir.
Q What is it?
A I do not know what it is.
MR. FERIA: That is all.

* * * *

CAYETANO BARAHONA, 30 years of age, married, accountant of the Roman Catholic Archbishop of Manila, Manila, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS: Do you know the property belonging to the chaplaincy in question?
A Yes, sir.

Q Do you know the description of that property?
A It is a building located at Rosario street.
Q Do you remember the number?
A Not now.
Q Who collects the rents of that building?
A The collector, but I am the agent and I sign the receipts.
Q Please state the amount of the rents collected by the Archbishop of Manila for the building in question from the month of January, 1911, until now.
A The books do not show the exact amount collected because the rents have not always been the same. Last year we had to lower the rent to ₱135.00 because of the general lowering of rents of buildings, and receipts have been issued to the tenants and the amounts appear year by year and month by month.
Q Did you prepare a statemtnt of the rents collected?
A Not yet. I was directed to bring the book and that is what I have here.
Q Can you not, by referring to that book, state the rents collected every year, beginning from 1911?
A Yes, sir, I can read them.
Q Please state how much was collected in 1911.
A ₱5,500.00
Q In 1912?
A ₱6,500.00.
Q In 1913?
A ₱12,000.00.
Q In 1914?
A ₱9,000.00.
Q In 1915?
A ₱10,000.00.
Q In 1916?
A ₱10,400.00.
Q In 1917?
A ₱8,400.00.
Q In 1918?

A ₱8,400.00.
Q In 1919?
A I left the book in the office.
(Witness leaves the court-room and after a while returns with a book.)
Q Please state the rents collected in 1919.
A ₱8,400.00
Q In 1920?
A ₱12,000.00.
Q In 1921?
A ₱12,000.00.
Q In 1922?
A ₱12,0000.00.
Q In 1923?
A ₱12,000.00.
Q In 1924?
A ₱13,500.00.
Q In 1925?
A ₱13,500.00.
Q Do your books show the expenses incurred in the collection of the rents of that building?
A Yes, sir, exactly.
Q What are the expenses?
A The expenses were for taxes, expenses of administration, etc.
Q I would like to know the amount of taxes paid, expenses of administration and expenses for the collection of rents.
A Yes, sir, those expenses appear here.
Q Begin with the year 1911, giving us the total of the expenses for taxes and expenses of administration.
A The total for 1911 is ₱3,463.49.
Q Please state the items.
A Insurance of the building, ₱628.16; taxes, ₱824.33; expenses of administration and legal fees, pro rata, ₱2,010.00.
Q What are those expenses for ₱2,010 which you classify as legal expenses?
A At that time, all legal expenses were divided proportionally among the "Obras Pias" (Pious

Institutions), also those of the administration —that is, all of the chaplaincies—including this item of expenses for employees and attorneys under the firm Hartigan & Welch.

Q Why were expenses incurred for lawyer's fees for the chaplaincy in 1911?

A The Board of Obras Pias (Pious Institutions) for the purpose of the better administration of the chaplaincies and to preserve all the properties belonging to them, passed a resolution to the effect that each and every one of the chaplaincies should assume its share of the expenses which were divided proportionally among them, as all of them are administered as one.

Q On what basis were the expenses for attorney's fees to be divided?

A Everything pertaining to expenses was to be divided proportionally. The total amount of income of all the chaplaincies was divided according to the income of each, that is, the greater the income, the greater were the expenses.

Q Was there any litigation regarding the chaplaincy in question in 1911?

A Expenses were incurred for securing Torrens title and for other legal expenses. In short, I would like to state that the Board of Obras Pias (Pious Institutions) which administered the chaplaincies, directed that all monthly expenses be divided proportionally among the chaplaincies, according to the income of each, so that a chaplaincy without income and with a dificit incurs in as little expense as possible. It was a sort of combining together to help each without encumbering one more than the others.

Q Please answer the question, whether or not there had been any litigation in connection with this chaplaincy in 1911.

A There were expenses in connection with the

securing of title to the same. Besides, for the good administration of the chaplaincies, taking into account that they are all devoted to the same purpose, and by decision of a majority of them, it was agreed that all the expenses should be divided proportionally among the chaplaincies, and thus, even if a certain chaplaincy did not incur in any expense during that month, it assumes its share of the general expenses in proportion to its income.

Q Who acted on behalf of this chaplaincy when it assumed the obligation to pay proportionately with the other chaplaincies the legal expenses?

MR. FERIA: I would like to state that witness has been employed only since four or five years ago and can not testify to facts which took place before he was employed.

COURT: Witness is testifying about books, and he may answer the question.

MR. FERIA: Exception.

A I cannot state exactly who was the agent because I do not know it now.

Q Was he your predecessor?

A Certainly.

Q Whom did you represent when you made the collections of the rents of the building belonging to the chaplaincy in question?

A The administrator of the chaplaincies.

Q Who is that administrator?

A The Archbishop of Manila.

Q You testified about the expenses incurred in obtaining Torrens title to the property in question. Are these expenses mentioned by you those incurred to obtain Torrens title, according to the books?

A Yes, sir.

Q In whose name was the Torrens title obtained?

MR. FERIA: I object to the question because it is not the best evidence. The title is the best

evidence.

COURT: Objection overruled.

MR. FERIA: Exception.

A In the name of the The Roman Catholic Archbishop of Manila.

Q Do the books show that The Roman Catholic Archbishop of Manila obtained the consent of the heirs to the chaplaincy before obtaining title to this property in its own name?

MR. FERIA: I object to the question because witness is incompetent to answer it. The best evidence is the records of the registration proceedings.

COURT: Objection overruled.

MR. FERIA: Exception.

A I have with me the certificate of Torrens title to the property in the name of the The Roman Catholic Archbishop of Manila. Inasmuch as this title was issued by a competent court, I think that it was issued in accordance with law and with all legal requisites, because the court, before issuing the ti tle, must have ascertained who is entitled to it, and having issued the title in the name of the The Roman Catholic Archbishop of Manila, I think that he is entitled to it.

Q I am not asking you who is entitled to it. I am asking you whether or not the records of the Archbishop show that the consent of the heirs to this chaplaincy was obtained when the Archbishop obtained Torrens title in his own name.

MR. FERIA: Witness is incompetent.

COURT: Objection sustained.

Q Do you have access to all the records pertaining to the chaplaincies?

A They do not come under my jurisdiction.

Q Do you have access to the private records of this chaplaincy in question?

A No, sir, they are under the charge of the Ec-

clesiastic Church. I do have access to them, as a private person.

Q Is it not true that you have been representing the Archbishop of Manila in looking for evidence for the defense since the beginning of this litigation?

A I have the documentary evidence which in my opinion as accountant are ready for him and for any person, because the Archbishop has no interest in this case beyond seeing to it that the testatrix's will is followed. And my answer, to be clearer, is that the same are the evidence which I can furnish to either party.

Q But if you represent the Archbishop of Manila to furnish evidence in support of his defense in this case, is it not true that you have access to all the records having reference particularly to this chaplaincy in question?

MR. FERIA: Objected to, as witness did not state that he is representing the Archbishop.

COURT: Objection overruled.

MR. FERIA: Exception.

A In the first place, I do not represent the Archbishop. I was summoned as accountant. With regards to the access to the records, I shall have to ask permission from the Church which is the custodian of these records.

Q I am going to make my question more concrete. Is it not true that you have access to, and have examined, all the records regarding the collections of the rents and expenses incurred in the administration of the property in question belonging to this chaplaincy?

A My direct responsibility refers to the period of time embraced during my employment and not more than what the books disclose.

Q My question is directed to that and is as follows: if you have access to, and have examined all the records pertaining to, or connected with, the collection of the rents and the expenses

incurred in the administration of the property in question.

A Here they are (showing the books).

Q Do these books which you now have before you contain all the records having reference to the rents collected and to the expenses incurred in the administration of the property belonging to this chaplaincy from the year 1911?

A Yes, sir.

Q Do these books show the items of expenses incurred in acquiring Torrens title in the name of the Archbishop to the property in question belonging to this chaplaincy?

A That title would not have been granted had not the fees been paid, because before receiving the title the fees required by law must first be paid, such as the expenses of survey, otherwise the Government will not grant the title.

Q What I would like to know from you is whether the books show the items of expenses incurred in acquiring Torrens title to the property in question belonging to this chaplaincy?

A Yes, sir.

Q What is the amount?

A That which I have already stated and others which I shall name for the succeeding years.

Q Are the legal expenses mentioned here as incurred in 1911 limited to the expenses incurred in acquiring the Torrens title?

A There are others because the administrator of the chaplaincies must take into account those cases where a chaplaincy does not have much income either because it does not have much property or because the property does not give much rent, and the will of the donor is thereby not fulfilled, because as Mr. Maniquis stated here notwithstanding no rents were obtained from the property he received the expenses for his support.

Q Your records then do not show the expenses incurred in obtaining Torrens title to the property belonging to the chaplaincy in question but the total sum of the expenses incurred in obtaining title to all the properties of all the chaplaincies, is that it?

A They do not show exactly the expenses incurred in obtaining that title.

Q Do you have with you the records or vouchers of the amounts paid as legal fees and attorne's fees in obtaining Torrens title to the property belonging to this chaplaincy?

A They were not called for, but if you want I shall look for them as they are under my charge and if I find them I shall show them to you with pleasure.

Q Will you be ready to bring before this Court at the next hearing of this case a detailed statement of the different items of expenses charged against the rents collected from the property in question from January, 1911, so as to avoid long questioning?

A Yes, sir, with pleasure. I can assure you that I shall be able to bring all the vouchers from the time of my employment, but as regards the vouchers previous to that, it depends upon what I may be able to find. I follow the American system and I keep the vouchers.

Q Please bring with you another statement of expenses incurred in the administration of the property only without including in it the expenses for any other chaplaincy.

A I shall bring a résume of the statement of account of this chaplaincy, tgother with all the vouchers for the same, and of all the data I may possess by virtue of my duties.

MR. GIBBS: That is all for the present.

HEARING OF February 23, 1926.

The same appearances before the same Judge.

EVIDENCE FOR THE PLAINTIFF
CONTINUED

TESTIMONY OF MR. BARAHONA CONTINUED

DIRECT EXAMINATION BY

MR. GIBBS: Did you bring with you a datailed statement of the expenses charged against the rents collected from the chaplaincy?

A I brought with me statements of the chaplaincy. I did not know that the hearing will be continued to-day and the data regarding expenses and incomes, in connection with these statements, are lacking.

Q Do you mean to say that you did not know of the hearing of this case for to-day?

A No, sir I did not. I did not know that it was for to-day, the 23rd.

Q Then you will be unable to answer questions regarding these expenses?

A I can answer only as regards the statements, but as regards the expenses and the income, you will have to give me more time.

Q When will you have them ready?

A Within some days because I have much work, as I shall have to file the income tax return before the end of the month.

Q Were you able to bring with you the appointments of the previous chaplains?

ME. FERIA: Objected to, as that is already in our stipulation.

MR. GIBBS: I want to offer the appointments themselves for the purposes of their contents.

MR. FERIA: I withdraw the objection.

A No, sir, because they are in the records of the church and I will need some time to look for them.

Q Is it not true that the documents and records regarding this chaplaincy are kept together?

A Yes, sir, a record of each chaplain is kept.

Q Are all appointments of chaplains kept in one record?

A No, sir, each chaplain has a separate record.

Q Can you bring the records of the appointments when you bring with you the detailed statement of the expenses and income of the chaplaincy?

A I can promise to bring the statement of expenses, and I shall ask to be given the other records and if given to me I shall produce them here; but I cannot assure whether they will be given to me, or if they exist at all.

Q Are you the custodian of these records?

A No, sir.

Q Who?

A Father Ignacio Tanbungui.

Q Who is the custodian of the letters addressed to the Archbishop of Manila in connection with this chaplaincy?

A Sometimes the chruch and sometimes the attorneys, according to the nature of the matter referred to in the same.

Q Can you name the persons to whom subpoenas duces tecum may be served to bring with them the original letters addressed to the Archbishop of Manila regarding this chaplaincy?

A If you let me know regarding what matter, I shall be able to tell you.

Q I call your attention to this letter, dated December 27, 1923, addresserd by attorneys Gibbs & McDonough to the Archbishop of Manila, and to this other letter dated January 26, 1924, sent by Gibbs & McDonough to the Archbishop of Manila, and state, if you know, who has them now.

A I do not know.

Q You brought here a statement which was marked Exhibit E. What is the total amount of rents collected from this property, since the year 1911?

A These statements are true and exact copies of the books having reference to chaplaincy No. 69, the subject of this case, and the income

and benefits obtained from the property appear there, and in the colum Debit are recorded all the expenses incurred by the chaplaincy. To comply with the petition of Mr. Gibbs, the detailed items are lacking.

Q According to your testimony given at the last hearing of this case, the total amount derived from the property of the chaplaincy from 1911 to 1925 amount to ₱145,200.00. Is this the correct amount of rents obtained during those years?

A Last time we figured from the book, the rents obtained from the property but that was not well done because even if the property produces an income, it may also have expenses, and the difference between the income and the expenses is the net benefit obtained, which is credited to the chaplaincy to be used to comply with the obligations imposed upon it.

Q Have you other statements besides Exhibit A'

A Yes, typewritten copies.

Q Where are the details of these large amounts appearing as debit in Exhibit A?

A Those are the ones I have been unable to make for lack of time, as I did not know I was going to appear today. I must make an appendix of expenses and income from the property, with detailed vouchers. These are merely statements and the income of this property, which supports the chaplaincy, is lacking as appendix,

Q Let us take, for example, this item in the year 1912, which reads "Works, ₱24,503.44." What are these works?

A As stated by Mr. Maniquis, when he was a chaplain, the building was burned. This building of the chaplaincy was of small value at the time of the donation because Binondo was then a town or province and was not a part of manila. When Mr. Maniquis was chaplain, this

building did not exist because it was burned, yet he continued to receive his support as chaplain. This amount was spent in the construction of the building now erected there, altho it is true that it was enlarged and improved after 1912.

Q Do you have the details of those expenses?

A Yes, sir the details appear in the records, altho many of them have already been destroyed. There are a few vouchers in the records of 1920 and 1921 which were saved.

Q There is an item for the year 1918 which reads "Payments made for the balance, debit P19,-570.00." What is this debit?

Mr. GIBBS: I withdraw the question.

Court was adjourned until March 3, 1926.

Hearing of March 3, 1926.
The same appearances before the same Judge.

MR. GIBBS: I beg leave to be allowed to file an amended complaint.

MR. FERIA: Altho the copy of the amended complaint together with the motion was received by us only yesterday, I have no objection. I move that I be granted the period allowed by the rules of court to interpose a demurrer or to file an answer to the amended complaint.

COURT: The Court admits the amended complaint and defendant is granted five days within which to interpose a demurrer or to answer the amended complaint.

Hearing of March 10, 1926.
The same appearances before the same Judge.

EVIDENCE FOR PLAINTIFF CONTINUED

MR. FERIA: I was summoned to bring with me some original letters sent by my colleague, Mr. Gibbs. I have only these two letters

which I brought with me and which I show now to Mr. Gibbs.

TESTIMONY OF WITNESS BARAHONA CONTINUED.

MR. GIBBS: Mr. Barahona, were you able to find the originals of the letters addressed to His Grace, the Archbishop, dated December 27, 1923, and January 26, 1927, signed by Gibbs and McDonough?

A No, sir, because all the letters sent to His Grace, the Archbishop regarding this case were sent to the Legal Department which before was the firm Hartigan & Welch and now Feria & La O and the latter answered your letters.

Q Who received them?

A The originals must be in the files of these law firms, Hartigan & Welch, or Feria & La O.

Q Did you make any effort to obtain the originals from them?

A I asked the Legal Department, Feria & La O, and I was told that they did not have them. I was unable to communicate with Mr. Katigbak or with Mr. Welch.

Q Calling your attention to this document, Exhibit B, state to the Court whether you remember having seen the original of the same.

A Yes, sir, I have an idea of having seen the contents of that letter.

Q Where did you see the original of this letter?

A I remember that this letter was received in the office and was later endorsed to the Legal Department for answer.

AGREEMENT: It is stipulated between the parties that it is a copy of a letter sent to His Grace, the Archbishop of Manila, on December 23, 1923.

The parties likewise stipulate that Exhibit C is the original of a letter which, on January 26,

1924, was sent by Messrs. Gibbs & McDonough to His Grace, the Archbishop of Manila, and that it was received by the latter.

It is likewise stipulated between the parties that Exhibit D is the original of a letter written by Messers. Hartigan & Welch, as attorneys for His Grace, the Archbishop of Manila, in reply to letters Exhibits B and C.

The parties stipulate that Exhibit E is the original of a letter signed and sent by Messrs. Gibbs & McDonough to Messrs. Hartigan & Welch, as attorneys for His Grace, the Archbishop of Manila, dated February 14, 1924, and that the same was received by Messrs. Hartigan & Welch.

It is likewise stipulated that Exhibit F is a letter signed by Messrs. Gibbs & McDonough and sent by them to Messrs. Hartigan & Welch as attorneys for His Grace, the Archbishop of Manila, dated March 14, 1924, and that it was received by Messrs. Hartigan & Welch.

It is stipulated that the signature appearing to be that of Thomas Cary Welch in the letter Exhibit G, dated March 22, 1924, written on behalf of Hartigan & Welch, is the genuine signature of Mr. Thomas Cary Welch, and that this letter was received by Messrs. Gibbs & McDonough.

MR. GIBBS: We offer as evidence Exhibits B, C, D, E, F, and G.

MR. FERIA: Objected to as immaterial.

COURT: Objection overruled and exhibits admitted.

MR. FERIA: Exception.

Q Did you bring with you the appointments or the records containing the appointments of the chaplains appointed to the chaplaincy founded by Petronila de Guzman?

A Yes, sir, the three volumes you see there. Those are all the records.

Q Did you bring with you copies of those docu-

ments so that they may be offered in evidence in place of the originals?

A No, sir. The copies to be made of those records are too many. You may point out what you need and the same will be copied.

Q Will you show us the appointment of the first chaplain?

A That is not recorded here. The appointment issued must be in the possession of the chaplain appointed. These records are made for the appointment of each chaplain. After he is admitted then the appointment is issued.

Q Was a copy not kept here?

A No, sir, because these are the records of their admission or rejection. The admission or rejection of a chaplain appears at the end of the record, and pursuant to that he is either admitted or rejected. In this third volume there is a record which reads "Final decision regarding this case" and this refers to the termination of the case.

Q Please confine your answer to the first chaplain. Where is the record of his appointment?

A Here it is (indicating.)

Q I call your attention to this Exhibit H and ask you who this Martin Garcia is.

A I do not know him but it seems that he was bishop of Cebu or Acting Archbishop of Manila.

MR. FERIA: I move that the answer be stricken from the record for being an opinion.

COURT: Motion granted.

Q But do you know this document, Exhibit H, as the appointment of the last chaplain to the chaplaincy in question?

A No, sir, because I do not know those things.

Q Who knows it?

A Father Tambugui, who is somewhat deaf and blind.

Q Will you leave these records here so that we

may examine them before the next hearing?

A I have definite instructions to place myself under orders of the Legal Department.

MR. FERIA: I have no objection. Do you mean to say that if I agree, you will leave the books here?

WITNESS: Yes.

MR. FERIA: Let the books remain here if the Court so orders.

Q Do these records brought by you here contain everything in connection with the appointments of all the chaplains of this chaplaincy?

A Yes, sir.

Q For our information, will you point out the pages having reference to the appointment of the first chaplain?

A Here on page 33 where it says "Final decision of this case."

Q Did you prepare the statement requested of you last time this case was heard?

A Yes, sir (witness produces it).

MR. GIBBS: I request that this document be marked Exhibit I.

Q Did you make a statement referring to years previous to 1919?

A I cannot, because the system of accounting was done in a different manner and there are no other data from 1911 to 1919 except those appearing in these books (witness shows a book entitled "R. G. No. 10185, book of accounting of charges and data pertaining to the chaplaincy founded by Petronila de Guzman").

Q Did you say that Exhibit A is a true copy of what appears in this book, from the year 1911 to 1918?

A Yes, sir.

Q You stated in your testimony before that quite a large sum was spent in the repair of building Nos. 210-214 at Calle Rosario. Why were the repairs made?

A Because the building was destroyed by fire.
Q Was the building insured?
A I do not know whether at that time it was insured.
Q Does it not appear in the books regarding the administration of this chaplaincy whether or not that building was insured?
A We can now ascertain whether it was insured. (Witness examines a book.) If it was insured, the amount of the insurance must have been collected by the former chaplain, Angel Gonzalez, who liquidated his accounts with the chaplaincy up to 1910.
MR. FERIA: I move that the answer be stricken from the record because it is a mere opinion of the witness.
COURT: Let opinion evidence be stricken from the record.
Q Do you mean to state to the Court that you do not know whether, from the records of this chaplaincy, that building was insured or not?
A No, sir.
Q According to the books of the chaplaincy, can you state to the Court whether the amount of the insurance was collected?
MR. FERIA: I object to the question because the books are the best evidence.
COURT: Objection overruled.
MR. FERIA: Exception.
A No, sir.
Q Please examine the books and see if you find anything about the insurance of the building. To help you in looking for this data, is it not true that the fire took place in 1912?
A I know nothing about that.
Q You charged against this chaplaincy P24,503.34 for repairs in 1912. Were these repairs done in order to rebuild the building which was destroyed by a fire?
A I did not charge anything. I saw in the accounts of 1912 an entry which stated "Repairs,

P24,503.34." I was not then employed in the chaplaincy.

Q According to the records of this administration, when did the fire giving place to these repairs take place?

A It was new concrete building.

Q Was it due to the fire?

A That is what it is said. I do not know.

Q But do you know that the chaplaincy was credited with a sum collected from the insurance company?

A I do not know. I was not the one in charge of the accounts at that time.

Q We are now examining the books of the management of the chaplaincy to help us know the facts.

A I know that the building is at present insured, but of the insurance of the building burned, I know nothing except by hearsay.

Q Does not the insurance for 1911 appear there?

A No, sir, it does not. There is an item for 1919 referring to insurance.

Q Referring to Exhibit A, is it not true that there appears an entry of P628.16 as insurance premium?

A Yes, sir.

Q Examine the books for 1909 and 1910 and see whether you find anything about payment of insurance premium.

A For the year 1910, P628.16 for insurance premium.

Q What about 1909?

A In the year 1909, P538.36.

Q Insurance premium?

A It does not say anything about insurance but of taxes.

Q Is it not true that you mentioned in your testimony before a period of time when no rents were obtained from the building because of the destruction of the same by fire?

A I said that there was a time when the building

did not exist, because I was so told and because, as testified to by Mr. Manikis, when he was chaplain the building did not exist, yet he continued to receive the income from the same for his education and support as chaplain.

Q Find out the time when there was no income.

A There is an entry here for 1900 which includes the income and expenses from November 4, 1897, to December 31, 1900, when Fernando Manikis was chaplain. This appears on pages 31 and 32 of the book of administration mentioned before and the last entry states that ₱70.00 were received as rents from Palanca. We do not know whether the building existed or whether the rent was for the land only. If there had been a building, it was of little value.

Q From what insurance company did defendant obtain its insurance of the building in question now?

A From the Fidelity & Surety Co.

Q And previous to that?

A I cannot say anything prior to 1911 because at that time I was not yet employed.

Q The fact is there is no entry that you know of regarding the collection of the amount of this insurance due to the loss of the building by fire?

A I did not find any.

Q Referring to Exhibit A, can you state what portion of the expenses were charged against this chaplaincy and what portion, to the others?

A There is nothing here except for this chaplaincy.

Q To whom did you pay the amount of ₱2,010.00 every year for the years 1911, 1912, 1913, 1914 and 1915, appearing in Exhibit A?

A There was a time when the salaries of the attorneys for the church exceeded $40,000.00, aside from the salaries of the employees of the Legal Department, and it seems that the management of the "Obras Pias" (Pious Intstitu-

tions) decided to divide proportionally those expenses among the incomes of the different chaplaincies so that those which did not have any might not accumulate their expenses.

Q Were these attorney's fees paid for the account of the chaplaincy, without reference to any service really done to that chaplaincy?

A The chaplaincy needed the services of the Legal Department in the survey of the properties belonging to it and in obtaining Torrens title to the same.

Q Do you know in what year was the Torrens title to that chaplaincy obtained?

MR. FERIA: The best evidence would be the Torrens title itself.

COURT: Objection overruled.

MR. FERIA: Exception.

A No, sir, I do not know.

Q Please find it out from your books and records.

A That does not appear here. We would have to find it out from the title itself.

Q Do you know whether at the time Torrens title was applied for that chaplaincy there was any opposition?

MR. FERIA: The best evidence of that opposition would be record of the registration proceedings.

COURT: Witness may answer.

MR. FERIA: Exception.

A I know nothing about that.

Q What is this entry in the year 1918 which reads: "Payments made for the balance, ₱19,570.00"?

A Probably it is part of the expenses incurred in the concrete building, because that building cost more than ₱60,000 and only ₱24,000 were charged against its account for the construction.

MR. FERIA: I move that the answer be stricken from the record because it does not answer the question.

COURT: Motion granted.

Q Will you examine the records which you now have and then tell us why this payment of ₱19,570, appearing in Exhibit A of 1918, was made?

A Only the entry which reads: "Payments made for the balance." It must be a payment for work done.

Q When was the erasure seen on page 49 of the book made?

A In 1918 I was not yet employed by the church.

Q Was not this erasure made during the last 24 hours?

MR. GIBBS: I request the Court to examine this erasure.

COURT: After an examination of page 49 of the book of administration of this chaplaincy, the Court finds in the same an erasure which seems fresh and recent.

Q Is it not true that the amount appearing here before was ₱29,000 and that recently the figure "1" was placed on top of the figure "2" and that this figure cannot be read above the zero which appears here?

A I know nothing about that because these books were in the files. I do not handle them.

Q Do you mean to say that you did not see this erasure before this time?

A Since I opened the book, I saw it as it is now, with these erasures.

MR. GIBBS: I request the Court to examine carefully the alteration made in this book which originally did not appear here.

COURT: The Court finds an alteration but cannot state when it was made.

Q In this book there appears this: "Payments made to the seminary for the balance."

A Yes, sir.

Q What is that seminary?

A I do not know.

Q Why is it that in this Exhibit A the word "seminary" was omitted?

A I told the clerk to copy exactly what appears here and I only saw to it that the figures tallied. I did not write that in the typewriter.

Q But did you present it as a true copy of the book?

A Yes, sir.

Q After refreshing your memory from page 49 of this book of administration, do you know perfectly well that this sum of ₱19,570 has nothing to do with the reconstruction of the building?

A No, sir. I stated before that it was an observation referring to an investment in the building.

Q See this amount which appears on page 49 of this book of administration. What is this amount appearing after the entry "Payments made to the seminary for the balance?"

MR. FERIA: I wish to state that witness is one offered by plaintiff and the Code of Civil Procedure provides that the party offering a witness cannot impeach him.

COURT: Objection overruled.

MR. FERIA: Exception.

A I see that rather clearly.

Q Whose handwriting is this?

A I was employed by the Archbishop since 1922. I answer for my books and for what I have done since 1922, but not for those before.

Q But the amount appearing there before the figure "1" was placed on top of the "2" and "7" of the middle figure of the three figures was ₱29,000?

A As the handwriting shows and the book was carried so badly that the one in charge of the same was inefficient in figures.

Q Can you explain to the Court why the figures "1" on top of "2" and "7" on top of the middle figure appear in the margin of the page?

A Having made a mistake, naturally he erased it. How it was done, I do not know.

MR. GIBBS: Due to the recent alteration of that amount appearing on page 49, I request that all the book be marked Exhibit J.

MR. FERIA: I move that the first part of the request be stricken from the record as not borne out by the facts proven.

COURT: Motion granted.

MR. GIBBS: I offer in evidence page 49 of the book of administration to prove that the entry regarding the disposition of part of the funds of the chaplaincy has been forged.

MR. FERIA: I object to the statement of my colleague Mr. Gibbs regarding the fact that the entry was forged, because such statement is not supported by the facts.

COURT: The objection to the statement of attorney Gibbs is sustained because up to now there is no evidence of falsification.

Q Where was this book Exhibit J kept from the time you were administrator?

A In a big book-case there.

Q Do you know the handwriting appearing on page 49?

A No, sir.

Q Where is the book where you yourself keep the accounts?

A In my office.

Q Will you bring it at the next hearing?

A Yes, sir.

Q The book kept by you, is it in your own handwriting?

A No, sir, I have a book-keeper. I am the accountant in charge of the accounting, but I do not do it myself.

Q What is the name of that bookkeeper?

A Salvador Antonio.

Q For how many years has he been your bookkeeper?

A For about three years.

Q Was he not an old employee when you began your employment?

A Yes, sir, but he was not in the accounting department then.

Q I would like to know who made these entries on page 49 of Exhibit J so that he may inform us of some facts in the next hearing.

A Yes, sir.

MR. GIBBS: That is all for the present.

Hearing of March 23rd, 1926.
The same appearances.

EVIDENCE FOR THE PLAINTIFF CONTINUED

AGREEMENT

It is stipulated and agreed by the parties that the testimony of Mr. Barahona be suspended in order to receive the testimony of Mr. Burn.

W. A. BURN, 27 years of age, single, Manager of the Insurance Department of Smith, Bell & Co., residing at 1438, F. B. Harrison, Pasay, Rizal, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS: In compliance with the subpoena *duces tecum* served upon you, please state if you brought with you the records on file of Smith, Bell & Co. referring to the payment of the insurance to the "Obras Pias" (Pious Institutions) in 1912.

A I have the accounts of the two companies, The Alliance Insurance Co. and The Commercial Union Insurance Co. showing payments of insurance for the month of March, 1912.

Q Please examine your records and state to the Court what payments were made by those com-

panies to the "Obras Pias" (Pious Institutions) thru Smith, Bell & Co.

MR. FERIA: It seems that counsel for plaintiff seeks to contradict his own witness, Mr. Barahona, who testified here, with the testimony of this witness.

COURT: He can do that.

MR. FERIA: I withdraw my objection.

A In March, 1912, The Commercial Union Insurance Co. paid to the "Obras Pias" (Pious Institutions) under policy No. 7391065, in the name of the "Obras Pias" (Pious Institutions) the sum of ₱10,062.50, and The Alliance Insurance Co., in the same month, under policy No. 4013961, in the name of the "Obras Pias" (Pious Institutions), paid the latter the sum of ₱10,062.50.

Q Do your records show what date of the month were such payments made?

A No, sir.

Q Please state whether the receipts issued by virtue of such payments were kept by the company.

A Yes, sir, those receipts were sent to the central office in England, as vouchers of the accounts.

Q Do your records show to what building this insurance referred to?

A These amounts appear in this book as debits against this country for loss by fire.

MR. FERIA: I move that the testimony of the witness be stricken from the record because it is immaterial and impertinent. It has not been shown by such testimony that these amounts were paid for the insurance of the building in question.

COURT: Motion denied pending the presentation of further evidence.

MR. FERIA: Exception.

MR. GIBBS: That is all.

MR. FERIA: No cross-examination.

TESTIMONY OF MR. BARAHONA
CONTINUED.

MR. GIBBS: Do you have with you the book of the "Obras Pias" (Pious Institutions) for the month of March, 1912?

MR. FERIA: I would like to state that at the last hearing, Mr. Gibbs bound himself to examine these books of the "Obras Pias" (Pious Institutions) and the same were placed at his disposal.

COURT: That statement has nothing to do with the question.

A I stated that I entered the employ of the "Obras Pias" (Pious Institutions) in 1922 and I know nothing of the accounts referred to by you. I do not know what happened before that date.

Q Can you bring here the books of the "Obras Pias" (Pious Institutions) regarding collections of insurance during the month of March, 1922?

MR. FERIA: Mr. Gibbs did not request a subpoena *duces tecum* to be issued for that.

MR. GIBBS: I have been occupied with trials morning and afternoon from the last hearing of this case. I did not know that the representative of the firm Smith, Bell & Co. did not have the data regarding the payment of the insurance and that is the reason why I did not know of the need of bringing those books here. I withdraw the question.

Q Do you have any record referring to the payment of the insurance mentioned by Mr. Burn in his testimony which you have just heard?

A I have stated that I was employed by the Archbishop of Manila since 1922. The accounts of the Archbishop were begun before that.

Q So that before 1919 there is nothing except this book?

A Yes, sir.

Q Do you mean to state to the Court that before your administration, the "Obras Pias" (Pious Institutions) did not keep any books of account?

A I did not find anything except that book. Each of the "Obras Pias" (Pious Institutions) has a book similar to that. My predecessor, Mr. Serrano, began the accounting in due form, which is the one I brought here (witness showing the book) on page 69. Mr. Serrano was succeeded by a Mr. Robinson, who is also dead, and I succeeded the latter from the year 1922.

Q What I want you to find out is whether or not the insurance was paid in 1912 to the "Obras Pias" (Pious Institutions). Can you find that out or have you already ascertained this fact?

A I have already stated that I do know nothing about what happened before my time.

Q With reference to this book marked Exhibit J, are there no other entries besides these appearing on page 46 for the year 1912?

A Yes, sir. As shown by this book, there is no other income except that.

Q How much was spent for the work?

MR. FERIA: Objected to, as the book is the best evidence.

MR. GIBBS: I withdraw the question.

Q What are these books which you have before you?

A These are the books of accounts from the time the keeping of them was began in 1919 by the deceased Mr. Serrano, the first accountant. He was succeeded by Mr. Robinson in October, 1922. At the death of the latter, I was employed as accountant until now.

Q Do you know whether the "Obras Pias" (Pious Institutions) received some twenty thousand pesos, as stated here by the representative of Smith, Bill & Co., Insurance Department, in March, 1912? Does it appear in the records

kept by the "Obras Pias" (Pious Institutions), what was done with that amount?

A Objected to in the first place because it is leading, and in the second place, it calls for an argument.

COURT: Objection overruled.

MR. FERIA: Exception.

A It must be taken into account that the "Obras Pias" (Pious Institutions) are many, have chaplaincy properties and real properties. It must first be ascertained what property was destroyed for which insurance was collected. The "Obras Pias" (Pious Institutions) have many properties in Manila which were destroyed.

Q Do the "Obras Pias" (Pious Institutions), therefore, have records of the insurance on properties administered by them in the year 1912?

A I do not know about 1912. I did not find any records referring to chaplaincies except these books for each of them. We are now keeping the account books required by the Code of Commerce. All of the expenses and income are kept in detail and supported by vouchers, according to the new American system.

Q Who managed these chaplaincies in 1912?

A I understand that it was White & Hartigan. I cannot be sure of it.

Q Do you mean to say Mr. Whitaker?

A The succeessors of Don Cayetano were Hartigan & Welch.

Q Do you know whether Mr. Whitaker had anything to do with this insurance?

MR. FERIA: Objected to because it assumes a fact not proven.

COURT: Witness may answer.

MR. FERIA: Exception.

A I know that Mr. Whitaker was employed in the law firm, as was Mr. Borromeo. I do not know which of them was in charge.

Q Who were the employees in the law firm of Hartigan in that year, 1912?

A I do not know, sir.

MR. GIBBS: That is all.

CROSS-EXAMINATION BY

MR. FERIA: Referring to the entries on pages 48 and 49 of Exhibit J which apparently have been erased, can you state to the Court whether the accounts which appear in these pages were continued in the books kept by the "Obras Pias" (Pious Institutions) after that year?

A In the year 1919, accountant Serrano, who was the accountant of the Bank of the Philippine Islands, was transferred to the office of the Archbishop of Manila to reorganize the accounts of the same. Mr. Serrano was the best accountant in Manila and began the account in his own handwriting where on page 69 of the book a balance appears as follows: Pious Institutions of the Church, Foundation 69 of Petronila de Guzman. Accounting began on January 2, 1919—Net proceeds, 1918, of the real property at Rosario street, 214, P6,265.24." This is the same amount which appears as balance on page 49 of the book Exhibit J, dated December 31, 1918.

MR. GIBBS: I move that the answer referring to the contents of the book, and that part referring to the ability of Mr. Serrano as accountant, be stricken from the record as incompetent and because it is not the best evidence.

COURT: Motion denied.

MR. GIBBS: Exception.

MR. FERIA: We request that we be allowed to offer copies of these two pages which will be marked Exhibit 1 of the defendant.

Q At the request of the attorney for the plaintiff, you produced these documents which were

marked Exhibits A and I of the plaintiff. Can you state to the Court what these amounts appearing under the column entitled DEBIT in these Exhibits A and I represent?

A These amounts are the expenses incurred by the chaplaincy or foundation No. 69 of Petronila de Guzman.

Q On page 3 and others of Exhibit A there appear certain items for various amounts under the column "Debit" stating, among others, the following: "₱6013.24, credited to the account of foundation 145, 3% of the seminary." There is another item for ₱200 given to Mother Venancia Panlaqui, the fees of four Catholic Sisters, Silang, Cavite, and another item for ₱2,505.00 under the column "Debit" for the support of Catholic schools, etc. Can you state to the Court what is the meaning of these amounts appearing under the word "Debit?"

A These amounts are the net proceeds remaining to foundation No. 69. The Archbishop allots to the seminary as much as possible for the support of poor students and the rest is invested in parochial Catholic schools which are without means to support such schools.

Q Do you mean to say that all the amounts which appear as expenses incurred for the account of this chaplaincy and which are under the word "Debit" in these Exhibits A and I, were made for those purposes by order of the Archbishop?

A Yes, sir.

MR. FERIA: That is all.

RE-DIRECT EXAMINATION BY

MR. GIBBS: Referring to Exhibit I, began in the year 1922, to whom was this ten per cent administration paid according to your book?

A The office charges for the administration ten per cent from all of them to pay the salaries

of the employees. The Archbishop was the one who charged that ten per cent.

Q When did your administration begin?

A In October, 1922.

Q To whom was this ten per cent paid?

A These amounts, that is, the ten per cent for administration, is charged by the office of the Archbishop and is used in paying the salaries of all the employees.

Q Without reference to the work done by them?

A Yes, sir.

Q Is there not, therefore, anything in the books of the "Obras Pias" (Pious Institutions) to show among what employees was that ten per cent for administration distributed?

A When there are many administrations, a certain per cent of the total is deducted and is used in the payment of the salaries of the employees.

Q Has the office of the Archbishop many employees?

A Yes, sir, we are eighteen, including the messengers.

Q Did the Chinaman who occupied the building at Nos. 210-214 in Rosario street pay the rents in the office of the "Obras Pias" (Pious Institutions), or did a collector go to his house to collect the rents?

A The collector goes to his house.

Q Did he have any difficulty in collecting the rents?

A Sometimes he had to go nine or ten times, because sometimes he was paid ₱100, others ₱500 and sometimes he was paid the whole sum.

Q Do your books show the partial amounts paid by that Chinaman?

MR. FERIA: Objected to as immaterial.

COURT: Objection overruled.

MR. FERIA: Exception.

A Sometimes when Mr. Go Joco, due to bad business, could not pay all the amount, considering that he is a reputable person, he was allowed to make a partial payment but that was not entered in the book.

Q So that your book does not show whether the rents for a month was paid fully or partially?

A It might be that there is an instance where he paid rents for two months at one time.

Q Since when did Go Joco occupy that building?

A Mr. Go Joco has been occupying it for about thirty years, more or less.

Q You therefore had an excellent tenant?

A Yes, sir.

Q State to the Court what he paid each month, if he made any partial payment.

A It appears here that everything has been paid but if at any time he paid the collector only P500, I gave him a receipt for all, for the purposes of accounting, and Mr. Go Joco completed the amount later.

Q In other words, do you mean to say that there was entered in the book a payment which was not really made?

A The responsibility was assumed if he did not pay the balance. Mr. Go Joco is a trusted tenant and a responsible person.

Q Do you dare say that the entries of the payments made by that Chinaman are correct?

A They are correct.

Q So that there was no difficulty whatever in the collection of those rents?

A We never had any. He is a very trusted person.

AGREEMENT

It is agreed and stipulated that the appointment of Angel Gonzalez y Guzman, plaintiff's father, attached to the records of civil case No. 10074

entitled Angel Gonzalez *vs.* His Grace, Jeremiah Harty, etc., is the original appointment which appears on pages 19 and 20 of the said record. Said appointment will be marked Exhibit K.

It is likewise stipulated and agreed that plaintiff will substitute this Exhibit K with a copy to be certified by the Clerk of this Court.

MR. GIBBS: That is all, reserving the right to adduce evidence regarding the payment of the insurance mentioned by the representative of the firm Smith, Bell & Co.

MR. GIBBS: We offer in evidence Exhibit J for the purpose of establishing the manner in which defendant alleges to have spent the money received for the account of the chaplaincy and to show that on page 49 of the same an erasure was made for the purpose of concealing the facts, without admitting of course, the correctness of the entries in Exhibit J.

MR. FERIA: I move that the statement of Mr. Gibbs that an erasure was made to conceal the facts be stricken from the record because it is not supported by any proof whatever.

COURT: Motion granted.

MR. GIBBS: Exception. We offer in evidence Exhibit A for the purpose of proving, in connection with Exhibit J, the disposition which defendant pretends to have made of the funds of the chaplaincy, calling the attention of the Court to the last entry in Exhibit J, page 49, year 1918, where the erasure appears which reads: "Payments made for the balance to the seminary," while in Exhibit A, the same entry reads: "Payments made for the balance," without admitting, of course, the correctness of these entries.

We offer in evidence Exhibit I for the purpose of showing the manner in which defendant pretends to have spent the funds of the chaplaincy from 1919 to 1925, without admitting, of course, the correctness of said entries.

MR. FERIA: We would like to know what our colleague means to say with the phrase "without admitting their correctness."

MR. GIBBS: The phrase is so clear that there is no need to explain it to Mr. Feria.

Court adjourns until March 24, 1926.

Hearing of March 24, 1926.
Before the same Judge.
The same parties.

EVIDENCE FOR THE PLAINTIFF CONTINUED.

MR. GIBBS: I offer in evidence the judgment of the court presided over by the Hon. Simplicio del Rosario, dated June 12, 1914, in civil case No. 10074 of this Court of First Instance of Manila, entitled Angel Gonzalez vs. Mons. Jeremiah Harty, etc., which appears on pages 150 to 158 of the records of the said case No. 10074, reserving the right to substitute it with a certified copy which shall be marked Exhibit L.

MR. FERIA: I object to the offer of this decision as evidence because this decision was reversed by the Supreme Court, because that decision contains mere conclusions of the Court and this counsel did not have an opportunity to cross-examine the one who made such conclusions.

MR. GIBBS: In connection with this decision of the lower Court, I was about to offer the decision of the Supreme Court which appears in Volume 32, page 328 of the Philippine Reports, for the purpose of proving and establishing that at the trial of that case No. 10074, the same efforts were made as in this

case to conceal the accounts of the chaplaincy and where the alleged account book of the chaplaincy offered in evidence as Exhibit 1 in that case No. 10074 and Exhibit J in this case did not have any entry after December 31, 1906, and therefore all the entries after that date are not original entries but made recently, after the said judgment of the Court of First Instance in case No. 10074 was rendered.

MR. FERIA: As regards the intention to offer in evidence the decision of the Supreme Court, we have no objection. As regards the other statements of Mr. Gibbs, I move that the same be stricken from the record because not borne out by the evidence.

COURT: Motion granted and objection sustained.

MR. GIBBS: Exception.

DANIEL BOQUER, 44 years of age, married, merchant, residing in Manila, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS: Do you remember having been employed by the "Obras Pias" (Pious Institutions) in the year 1912?

A Yes, sir.

Q Do you know the building Nos. 210-212-214, at Rosario street, Manila, pertaining to a chaplaincy?

A Yes, sir.

Q Do you know what happened to that building in the year 1912?

A It was burned in a fire which took place at Rosario street.

Q Do you remember whether the building was insured or not?

MR. FERIA: Objection to as leading.

COURT: Objection overruled.

MR. FERIA: Exception.

A It was insured.

Q Do you remember who was the Chief of the Insurance Company?

A The firm Smith, Bell & Co.

Q Do you remember or not the amount, more or less, collected by the "Obras Pias" (Pious Institutions) as insurance because of the loss by fire of that building?

A That happened a long time ago and I cannot state the exact amount, but the whole amount of the insurance was not collected because the insurance company refused to pay it and the attorneys for the Church had to be called to make the collection. I understand that by a settlement, the amount stated in the policy was diminished and it was that amount, as diminished, that was paid.

Q Do you remember how much, more or less, was paid?

A I cannot state the amount, but I have an idea that it was around ₱20,000, more or less, something like ₱17,000. If I could go over the books, I will be able to give the exact amount.

Q Do you remember whether at that time the "Obras Pias" (Pious Institutions) kept any books of account where the amount of the insurance collected was entered?

A Yes, sir.

Q Do you remember in what year that collection was made?

A A few months after the fire.

Q A year after, more or less?

A The same year the fire took place, but payment was made some months later because there was settlement between the insurance company and the attorneys for the Archbishop of Manila.

Q Do you remember whether in that year other buildings of other chaplaincies were burned?

A I remember only that there was a building at

Rosario street belonging to the Hospicio de San Jose which was burned, but I cannot say whether it was in the same year, but that was also refused payment and I know that the whole amount of the insurance was not paid.

Q That building destroyed by fire, did it belong to any chaplaincy?

A No, sir, it was the property of the Archbishop.

Q When was this building burned, in connection with the fire which destroyed the building Nos. 210-214?

A It was at a different date and time. I cannot state exactly.

Q Which was burned first?

A This refers to facts which happened many years ago and I cannot tell you exactly. I shall have to refresh my memory by looking up the circumstances. If I am given an opportunity, I shall be able to state the dates and the exact amounts.

Q Was there not any book of account where the receipt of this insurance by the "Obras Pias" (Pious Institutions) was entered?

A The book of income and expenses, and also the book of current account with the bank kept in the office where the amounts collected are entered.

Q When were you employed in the "Obras Pias" (Pious Institutions)?

A From 1901 to 1919.

Q During that time, will you state to the Court whether there were complete books of account kept by the "Obras Pias" (Pious Institutions)?

A There was a time when the accounting was not clear because of the death of the accountant who kept the books. There were three accountants at the time I was employed, Messrs. Balbo, German and Serrano.

Q At what time were the accounts not clear?

A From the death of Mr. Balbo until his succes-

sor was appointed and took charge of the accounting of the office.

Q Do you remember more or less when he died?

A My memory is rather weak in remembering dates, if I do not write them down.

Q Referring to the time when the insurance in question was collected which according to you was when the "Obras Pias" (Pious Institutions) had their accounts complete, please state to the Court if complete and clear accounts were kept after said insurance was collected.

A It was up to 1914, more or less, when the accounting was rather confused because of lack of personel as the book-keeper died and the new book-keeper had not been appointed. During that interval of time investments and payments were made out of the amounts collected as insurance and of the amounts paid in connection with this chaplaincy.

Q Do you know where those books are kept now?

A When I left, these books were kept in the office occupied by me. I do not know where they are now.

Q In what office?

A In the ground floor of the Archbishop's palace.

Q Who was the book-keeper at the time the insurance corresponding to this chaplaincy was collected?

A I think that at that time the position of book-keeper was vacant.

Q How do you know that entries were made of those payments?

A Because there were assistants in charge of this work.

Q How do you know that these amounts were entered in the book? Do you personally know whether entries were made of those payments?

A Yes, sir, I know that the collection and payments made in connection with the burning of the building and its reconstruction were en-

tered in the books.

Q Will you accompany Mr. Barahona now and bring here the book where the collection of this insurance was entered?

A I can help in looking for it, but I do not know where these records are kept.

MR. GIBBS: That is all.

CROSS-EXAMINATION BY

MR. FERIA: Who administered the properties of the "Obras Pias" (Pious Institutions) from 1911 to 1912?

A Mr. Hartigan.

Q What was your position then?

A I was employed by Mr. Hartigan.

Q Were you then in charge of the books of the chaplaincies?

A No, sir, there were assistants who were in charge of them.

Q Who collected that insurance mentioned by you?

A The law firm of Kincaid & Hartigan, who were then the attorneys for the "Obras Pias" (Pious Institutions).

Q Did you know that it was collected because of the information of others?

A Yes, and.....

Q And you.....

MR. GIBBS: (To Mr. Feria): Let witness explain.

MR. FERIA: He can explain later if he wants to.

Q But you personally do not know about it, did not receive that money, neither has it passed thru your hands, nor tried to collect it from the insurance company?

A I have sufficient memory to remember that that amount was collected and taken up in the accounts and was used to continue the reconstruction of the building.

Q Is it not true that you know all of what you have stated because of the information given

you by the office of Messrs. Welch & Hartigan?

A Yes, sir. They were entrusted with the collection of the insurance because the insurance company refused to pay the whole amount of the insurance.

Q Is it not true also that your statement that these collections were entered in the books you know only thru the information of others, and that you yourself did not enter that collection in the books?

A I did not personally make the entries.

Q So that all you know about the entry testified to by you, you knew only thru the information of other employees in the office?

A Yes, sir, and because I was in the office at that time.

Q Do you mean to say by the phrase "because I was in the office at that time" that you knew about it thru the information of other persons because you were in the same office?

A Yes, sir, and besides because of my intervention in the entries in connection with the collections and payments in the administration of the "Obras Pias" (Pious Institutions).

Q Do you mean to say that you yourself took part in the collection of that insurance?

A From the insurance company to the law firm, no.

Q Do you mean to say that you took part in the making of the entry of the payment in the book referred to by you?

A No.

Q Is it not true that the amount of the insurance never passed thru your hands?

A It must have passed thru my hands because I, in my capacity as assistant to Mr. Hartigan, Mr. Hartigan used to entrust to me the collections having reference to the properties of the "Obras Pias" (Pious Institutions), so that because of this fact I am quite sure that that

amount passed thru my hands and if I am given a chance I can clear up all this.

Q Is it not a fact that you stated that that amount must have passed thru your hands because the amounts collected by Mr. Hartigan for the account of the "Obras Pias" (Pious Institutions) must pass thru your hands?

A Yes, sir, with very rare exceptions.

Q And because of that fact you assert now that that amount must have passed thru your hands?

A Yes, sir.

Q Besides that, do you have any other reason to be sure that those amounts passed thru your hands?

A Yes, sir, but I am almost sure that they passed thru my hands.

Q Is it not true that the Hospicio de San Jose buildings are insured with Smith, Bell & Co.?

A No, sir, I think with Filipinas Company.

Q When you mentioned the books or the accounts of the "Obras Pias" (Pious Institutions) stating that at one time they were not very clear and complete, do you mean to state to the Court that there were no data—income and expenses—of the chaplaincies?

A Yes, sir, there were drafts.

Q Do you mean to say that altho the accounts were not complete, the expenses and the incomes of the chaplaincies were recorded?

A Yes, sir.

Q When did the law firm of Hartigan cease to administer the "Obras Pias" (Pious Institutions)?

A It continued to be so until I left the office in 1919.

Q Is it not true that when you state that building Nos. 210-214, Rosario street, was insured, you so state because other persons in your office told you so, but that personally you do not know it?

A The policies were under my care and that is why I quite remember the facts testified to by me. But as regards dates, I cannot remember them exactly, altho important facts, such as the fire and the incidents regarding the collection of the insurance, are remembered by me because they are so engraved in my mind that I cannot forget them.

Q But you cannot also state how much was the amount collected?

A I cannot, but if I am given an opportunity I shall be able to find it out.

Q Can you not state whether it amounts to ₱1,000.-00 or ₱5,000.00?

A I know that it was around ₱20,000.00, more than ₱15,000, about ₱17,000.00 or ₱18,000.00.

Q Why do you know it?

A Because I remember it, altho I cannot state the exact amount. I can find that out.

Q Is it not true that when you state that the amount of the insurance was more than ₱15,-000.00 but less than ₱20,000.00 it is because you were so informed by other persons?

A No, sir. I remember it and, further, by the value of the building. The "Obras Pias" (Pious Institutions) insure their buildings in their true value.

Q Do you mean to say that you estimate in more than ₱15,000 but less than ₱20,000 the amount of the insurance because of the value of the building belonging to that chaplaincy and of the amount in which it was insured?

A Yes, sir.

Q But do you know personally the amount paid?

A I have already stated that I cannot give the exact dates and amounts without examining the books.

Q Is it not true that, aside from that estimate, you have no personal knowledge that the amount collected was more than ₱15,000 but not less than ₱15,000?

A It must be from personal knowledge because the policies were in my possession as person in charge of them. During Mr. Hartigan's time, I was in charge of the safe where important documents were kept, and I am sure that the policies of insurance of that building were in my possession.

Q My question was whether the amount collected was not received by you personally.

A It is not true that I did not receive it because I collected for the law firm as the insurance company did not want to pay when demand was made upon it and the law firm had to take charge to enforce the collection of the amount of insurance.

Q Did you not state a while ago that you knew that the amount was collected thru the information of Mr. Hartigan and not of your own personal knowledge?

MR. GIBBS: The stenographic notes are the best evidence of what witness has stated.

COURT: Let him answer.

A I have already stated many times that the collection of the amount of the insurance was made by the law firm because the insurance company did not want to pay it, and the law firm had to take charge of the matter. Large amounts of money did not pass thru my hands as sometime they were deposited immediately in the bank. But generally the money passed thru my hands—thru the office—and I can almost be sure that the check passed thru my hands and deposited it in the bank.

Q Please answer the question.

Mr. GIBBS: Objected to, as the stenograpic notes are the best evidence.

COURT: Objection overruled.

MR. GIBBS: Exception.

A What is the question?

Q That you, of your own knowledge, do not know that these amounts were collected and that you

know this fact thru the information of Mr. Hartigan who was then the administrator of the "Obras Pias" (Pious Institutions).

A I have already stated that the insurance company refused to pay the amount of the insurance when demand upon it to do so was made, and the attorneys for the church intervened in the collection of the same, and I am almost sure that the check in payment of that amount passed thru my hands and that it was deposited in the bank. What the amount of the check was, I cannot remember at this time.

MR. FERIA: That is all.

RE-DIRECT EXAMINATION BY

MR. GIBBS: Do you know of any other building belonging to the "Obras Pias" (Pious Institutions) insured with Smith, Bell & Co., besides that at Rosario street, Nos. 210-214?

A Yes, sir, there were other buildings insured with that company.

Q Was there any other building at Rosario street which was burned and insured with Smith, Bell & Co.?

A I do not remember any other building that was burned except that, because the insurance company refused to pay the amount of the insurance. I also remember that the insurance was taken from this compnay and placed in another.

Q Please state whether all the properties administered by the "Obras Pias" (Pious Institutions) were insured at that time.

A No. Only those which offered more risk.

Q We will limit the question to the buildings having considerable value. Do you know if all the buildings were insured at that time?

A It was the policy of the administration to insure only those buildings which offered much risk because located in places which were deemed dangerous.

Q Were these accounts referring to the collection of the insurance for the "Obras Pias" (Pious Institutions), together with the rents, entered elsewhere than Exhibit J?

A Yes, sir, that book is only a sort of auxiliary journal.

Q Were those other books the books of original entries?

A Yes, sir.

MR. GIBBS: That is all.

FURTHER CROSS-EXAMINATION BY

MR. FERIA: You stated that you do not remember the burning of another house in Rosario street at that time insured with Smith, Bell & Co. Is it not true that other buildings might have been burned without your remembering it now?

A I mentioned the two houses at Rosario street which were burned and which I remembered.

Q Is it not true that other houses belonging to the charitable institutions insured with Smith, Bell & Co. at that time were burned without your remembering it now?

A The "Obras Pias" (Pious Institutions) have only two buildings as far as I remember, one belonging to the chaplaincy and the other to the Hospicio de San Jose.

Q Did you state that this book Exhibit J is the auxiliary journal kept in the office of the "Obras Pias" (Pious Institutions) where you were employed at that time?

A Yes, sir.

Q Is it not true that all of the income and expenses of the property belonging to the chaplaincy of Petronila de Guzman are entered in this auxiliary journal?

A No sir; they do not appear there for the reason that at that time there was no efficitent bookkeeper in the office of the "Obras Pias" (Pious Institutions). The accounts were rather de-

fective, not clear and kept by a personnel which was not competent and for this reason it is not surprising that there were not many entries.

Q As assistant of Mr. Hartigan in the administration of the "Obras Pias" (Pious Institutions) were you not in duty bound to see to it that all of the income and expenses be timely entered in the proper book?

A Part of my duties was to help the administrator in this work.

Q Is it not true that the book Exhibit J was kept in such a way that all the income and expenses of the chaplaincy of Petronila de Guzman are entered there so that the net proceeds according to the chaplaincy, after deducting the expenses for the church, appear there?

A The entries were made in a notebook and from there, the person in charge transferred them to the auxiliary journals. I am sure that due to the faulty accounting, as there was no competent person to take charge of the same, it was not surprising that the collections and payments made at that time do not appear there, unless the new bookkeeper has made a general checking up and balance the auxiliary journals.

Q Do you mean to say that you, of your own knowledge, know that some entries were not made in Exhibit J?

A That is what I suppose.

Q But do you know whether or not the entries were made?

A Of course I do not know it for sure.

Q When you stated that the office of Mr. Hartigan administered the "Obras Pias" (Pious Institutions) do you mean to say that that gentleman was the administrator?

A Now, I remember a detail. About two or three years before leaving the employ of the "Obras Pias" (Pious Institutions) there was a readjustment in the administration and the depu-

ty archbishop appointed an ecclesiastical administrator, Father Sanchez, with a personnel under his direct orders in charge of the collections and payments of the "Obras Pias" (Pious Institutions). I state this because I happen to remember that in 1914 or 1915 the administration was given to Father Sanchez as chief of the new administration.

Q When Mr. Serrano was employed as a bookkeeper, were you still employed in the law firm of Mr. Hartigan?

A Yes sir.

Q Was Mr. Serrano a competent bookkeeper?

A Yes sir.

Q Is it not true that Mr. Serrano made a readjustment of all the accounts of the "Obras Petronila de Guzman?
Pias" (Pious Institutions) especially those of

MR. GIBBS: I object to the question because it is improper cross-examination.

COURT: Objection overruled.

MR. GIBBS: Exception.

A I remember that Mr. Serrano went over the accounts and made some readjustments.

MR. GIBBS: I move that the testimony of witness regarding the competency of Mr. Serrano as bookkeeper be stricken from the records.

COURT: Motion denied.

MR. GIBBS: Exception.

Q Is it not a fact that Mr. Serrano was then the bookkeepeer of the Bank of the Philippine Islands and of Madrigal & Co.?

A Yes sir.

Q Showing you these pages 68 and 69 of Book A of the "Obras Pias" (Pious Institutions) and marked Exhibit 1, is it not true that these entries were made by the bookkeeper Mr. Serrano after readjusting the accounts of Petronila de Guzman, that is, of foundation No. 69 of Petronila de Guzman?

MR. GIBBS: Objection to the question because it is improper cross-examination. The direct examination of this witness was limited to the collection of the amount of the insurance.

MR. FERIA: My colleague has questioned the witness regarding the accounts for 1912 to 1919.

COURT: Objection overruled.

A I know that this book is the result of the work made by Mr. Serrano then.

MR. FERIA: That is all.

FURTHER EXAMINATION BY

MR. GIBBS: If I understand you correctly you stated in your cross-examination that the building belonging to the Hospicio de San Jose at Rosario street was burned and was insured with Filipinas Co.?

A Yes sir, that is what I remember and I am almost sure of it.

Q Do you know the handwriting which appears on pages 43 to 49 of the book Exhibit J?

MR. FERIA: Objected to because it is improper in further direct examination.

COURT: Objection overruled.

MR. FERIA: Exception.

A This was done by the auxiliary personnel employed by the administration then.

Q But do you know the handwriting?

A No sir. There were so many employees that I cannot be sure of it.

Q Who else intervened in the matter of the collection of that insurance?

A Mr. Hartigan, Mr. Kincaid and Mr. Whitaker, who was the auditor, and I.

MR. GIBBS: That is all.

FURTHER CROSS-EXAMINATIOIN BY

MR. FERIA: Is it not true that the entries which appear on pages 68 and 69 of the book Exhibit 1 are in the handwriting of Mr. Serrano?

A Yes sir.

Q Is it not true that you cooperated with Mr. Serrano in the readjustment of the accounts and balances which appear on pages 68 and 69 marked Exhibit 1?

MR. GIBBS: Objected to as improper cross-examination.

COURT: Objection overruled.

MR. GIBBS: Exception.

A I cooperated with Mr. Serrano in an incomplete manner. In those matters in which I was able to help him I cooperated with him, but my duties had nothing to do with accounting.

Q Is it not true that you as assistant of the administrator of the "Obras "Pias" (Pious Institutions) gave Mr. Serrano all the data, documents and books having reference to the chaplaincy of Petronila de Guzman, so that the balance appearing on pages 68 and 69 of Book A of the "Obras Pias" (Pious Institutions) for the years 1919 to 1921 marked Exhibit 1 might be made?

A All of the documents under the care of Mr. Hartigan were given to the new administrator, who was Father Sanchez and who inaugurated the change of policy in the administration. The accounting then was entrusted to accountant Luis Cocullo. When the latter died he was substituted by Mr. German who was under the orders of Father Sanchez. Mr. German died and he was substituted by Mr. Serrano, so that I could not have given the documents to Mr. Serrano but to Mr. Cocullo.

Q Is it not true that due to the change in the administration of the "Obras Pias" (Pious Institutions) from Mr. Hartigan to Father Sanchez you continued to render services as assistant to help Mr. Serrano in the readjustment of the accounts of the foundations belonging to the "Obras Pias" (Pious Institutions)?

A Serrano was rather competent. He was the one who least used my services as regards the

work entrusted to him. I worked most with Mr. Cocullo and with Mr. German.

Q Is it true that you continued as assistant to the administrator of the "Obras Pias" (Pious Institutions)?

A Mr. Serrano began in 1919 and I left in 1919, so that soon after Mr. Serrano came in, I left.

Q But you were able to cooperate with Mr. Serrano in the readjustment of the account in the foundation of Petronila de Guzman which appear on pages 68 and 69, were you not?

A Had he asked me to, I would have. Mr. Serrano was able to do the work alone and did not ask me many questions like Messrs. Cacullo and German. Mr. Serrano did not question me often, but every time he asked me for information I was able to give it to him.

Q But did you cooperate with him?

A As regards the making of the accounts, Mr. Serrano was rather a strange person. He thought that he knew enough and did not need the help of any one.

Q Is it not true that Mr. Serrano had all the data given by Mr. Cocullo when this readjustment appearing on pages 68 and 69 was made?

A Mr. Serrano had at his disposal the books made by accuntants Cocullo and German. He was a man of few words and I did not think that he needed my help as his predecessors did.

Q Is it not true as you have stated that you gave all the information referring to the chaplaincy to Messrs. German and Cocullo?

A Yes sir.

Q And that you know that the amount of this insurance of ₱20,000 was paid to the "Obras Pias" (Piuos Institutions) by Smith, Bell & Co.?

A Yes sir.

Q And therefore you must have given this information to either Mr. Cocullo or Mr. German?

A At that time it was not my duty to intervene in the accounting because this department was in the charge of a competent person.

Q My question does not refer to the accounting but to the data which you furnished to Messrs. Cocullo and German.

A All the data referring to the administration of Mr. Hartigan was given to Messrs. Cocullo and German.

Q Was it among these data what you stated that Smith, Bell & Co. paid the amount of the insurance on the buildings Nos. 210 to 214 at Rorio street?

A It must have been.

MR. FERIA: That is all.

Simplicio del Rosario, of legal age, married, Judge of the Court of First Instance of Manila after being duly sworn testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS: Did Your Honor intervene as judge in the case of Angel Gonzalez *vs.* Mons. Harty, etc., No. 10074 of this court?

A Yes sir.

Q Please refresh your memory and try to remember the judgment rendered by Your Honor dated June 12, 1914, and state if you can identify this book of income and expenses belonging to the chaplaincy founded by Petronila de Guzman and offered as Exhibit 1 in that case No. 10074?

A Yes sir, I rememeber it.

Q Refreshing your memory with this judgment rendered by you and appearing at page 156 of case No. 10074 please state wether or not there was anything written on pages 43 to 49 of this book Exhibit J?

A If this is the same book which was offered and regarding which the judgment was rendered,

after this page 43 there was nothing written and it was because of this that on page 156 I stated that as regards the income of the property for the period of 1907 to 1910 no account was kept by the defendants—of the administration of the chaplaincy—during that period. After these words "December 31, 1906" everything was blank.

MR. FERIA: I move that the testimony of the Honorable Simplicio del Rosario be stricken from the records because it is immaterial. The matter referred to by the Honorable Simplicio del Rosario in his judgment had reference to the accounts of 1096 to 1910. What is treated of in the instant case is the rendition of accounts from 1911, when the former chaplain left, until now so that what might have happened up to 1910 is of no importance in this case because the judgment rendered by the Honorable Simplicio del Rosario states that the plaintiff, the predecessor of the now plaintiff, entered into a compromise with the Archbishop of Manila, receiving ₱12,500.00 as net proceeds up to 1910. What is claimed now is the rendition of accounts from 1911 up to the present time, and what might have happened before was the subject of an agreement.

MR. GIBBS: Defendant complying with our subpoena *duces tecum* presented this book of income and expenses—regarding which witness now testifies to—as the correct statement of account of the disposal made of the collections of money belonging to the chaplaincy in question, the entries of which defendant alleges to be original. The testimony of witness in connection with the judgment was that all of this part of the book after the entry of December 31, 1906, was in blank so that all of the data after that date up to December 31, 1918 were made after 1914 when the Honorable Judge Del Rosario rendered this judgment.

MR. FERIA: The question raised in that case was whether the church should pay the amounts or income up to 1910 and we submit that the testimony of the Honorable Simplicio del Rosario is immaterial.

COURT: The objection seems to be made for the purpose of confusing the court because the point of the investigation is not the accounts for 1910 but those after that date and therefore the objection is overruled.

MR. FERIA: Exception.

MR. GIBBS: That is all.

CROSS-EXAMINATION BY

MR. FERIA: Is it not true that the question which Your Honor was then deciding referred to the accounts of the chaplaincy up to 1910 only?

MR. Gibbs: Objected to because the decision itself is the best evidence of its contents.

COURT: Objection overruled.

MR. GIBBS: Exception.

A I cannot remember any more to what years the accounts belonged because more than 11 years have elapsed from the time I rendered the judgment.

Q I am showing you this decision and ask you to refresh your memory. Please state whether it is not true that that was the question raised in that case?

MR. GIBBS: Objected to because the question is impertinent.

COURT: Objection overruled.

MR. GIBBS: Exception.

A From 1901 up to the end of the case, as appears in the second paragraph of the decision.

Q I am showing you part of the decision which appears on pages 7 and 8 of the same, and is it not true, Judge, that the question decided in this decision referred to the benefits of the chaplaincy founded by Petronila de Guzman corresponding to the years 1901 to 1910 only?

MR. GIBBS: We admit that the matter in question

was limited to the years 1901 to 1910.

A What appears in this decision is the computation made of the rents up to December of 1910.

Q Therefore, Judge, the only thing which you wanted to know in deciding that case was whether or not there were entries in this book Exhibit J for the period of time comprised between 1901 and 1910, is that not true?

A I cannot say whether that was the only point that interested me.

Q Is it not true that the only thing you wanted to know about these entries in this book Exhibit J to decide that case was whether or not there were entries from 1901 up to 1910?

A I cannot say whether I wanted to know that. The decision refers to the facts found in the book.

Q It was immaterial whether or not there were entries from 1911. Is it not true that the only thing pertinent for you to determine and decide was whether there were entries up to 1910?

A My decision should give the answer to that.

Q Refresh your memory, Judge, by reading the decision. Is it not true that what you had to decide in that case was whether or not there were entries and the amount of the same in this book corresponding to 1901 up to 1910?

MR. GIBBS: Objected to because the question has already been answered.

COURT: Let witness answer.

MR. GIBBS: Exception.

A I had to decide the question raised.

MR. FERIA: In view of the statement made by the Honorable Simplicio del Rosario I again respectfully move that his testimony be stricken from the records because it is immaterial.

COURT: Motion denied.

MR.FERIA: Exception.

MR. GIBBS: We should like now to offer a certi-

fied copy of the judgment rendered in case No. 10074 as part of the testimony of the Honorable Simplicio del Rosario, which copy is to be marked Exhibit L. This decision has already been identifed by the Honorable Simplicio del Rosario.

MR. FERIA: We object to the admission of this document Exhibit L on the ground that the Honorable Simplicio del Rosario based his testimony on this same decision which was reversed by the Supreme Court.

COURT: The decision itself is not admissible as independent evidence, but inasmuch as it has been mentioned both in the direct and in the cross-examination it is admissible as part of the testimony of the witness who mentioned it in the same.

MR. FERIA: Exception.

That is all.

PHIL. C. WHITAKER, 44 years of age, married, merchant, residing at Malate, Manila, after being duly sworn testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS: A witness Mr. Daniel Boquer, stated that you represented the "Obras Pias" (Pious Intitutions) or you were employed by the "Obras Pias" (Pious Institutions) in 1912. Please state whether or not this is true?

MR. FERIA: Objected to because it is leading.

COURT: Objection overruled.

MR. FERIA: Exception.

A Yes, sir.

Q Do you know the building Nos. 210 to 214 at Rosario street pertaining to the chaplaincy of Petronila de Guzman?

A Yes, sir.

Q Do you know whether or not in the year 1919 or in the latter part of 1911 a fire occurred there?

A Yes, sir; I do not remember the date but the building referred to by you was burned.

Q Do you know whether or not the building was insured?

A Yes sir, it was insured.

Q do you know with what firm was that building insured?

A With Smith, Bell & Co.

Q Did you take part in the collection of that insurance or in the settlement of the amount paid?

MR. FERIA: The question is leading.

COURT: Objection overruled.

Mr. FERIA: Exception.

A Yes, sir.

Q What was your intervention?

A We insured the building for ₱25,000.00 with Smith, Bell & Co. When the building was burned we were only offered ₱16,000.00 alleging that with that amount the building could be reconstructed. After several conferences we agreed to settle the case, accepting in payment of the policy for ₱25.000.00—I do not exactly remember the amount but I think that it was ₱20,000.00—because there was something about the return of premium which at this time I do not remember how much.

MR. GIBBS: That is all.

CROSS-EXAMINATION BY

MR. FERIA: Did you personally take part in the collection of the policy?

A Personally I had several conferences with Mr. King of Smith, Bell & Co. because we threatened to sue the firm to collect the ₱25,000.00 because that was the amount fixed by them.

Q To whom was that amount paid?

A I cannot say. I suppose to the Office of the "Obras Pias" (Pious Institutions) or to the attorneys for the church.

Q So that you do not know anything about the payment?

A I do not know whether I signed the receipt or it was the law firm of Hartigan. What I know is that we were paid, but I do not remember exactly how much.

Q Did that amount paid by the insurance company pass thru your hands?

A Possibly, if I signed the receipt.

Q So that you cannot positively state whether you collected that amount or not?

A I personally?

Q Yes?

A No, sir.

Q You do not likewise know for sure whether Mr. Hartigan received the payment made by that firm?

A I remember that checks amounting to about ₱20,000.00 passed thru my hands and that amount, whatever it might be—I do not remember how much—I delivered to Mr. Boquer.

Q It was then Mr. Boquer who received the ₱20,000.00?

A He was the accountant and cashier.

Q Were you working then for the law firm of Kincaid & Hartigan?

A Yes sir, as administrators of the "Obras Pias" (Pious Institutions).

Q Until when were you working in the law firm of Mr. Hartigan as employee of the administration of the "Obras Pias" (Pious Institutions)?

A Until 1916 or 1917.

Q When you left that law firm, did the law firm of Hartigan continue to administer the "Obras Pias" (Pious Institutions)?

A No, sir; I think not. They rather represented the Archbishop but they were no longer administrators of the "Obras Pias" (Pious Institutions).

Q When did the law firm of Kincaid and Hartigan cease to be the administrators of the "Obras Pias" (Pious Institutions)?

A I do not remember the year.

Q Did you have any intervention in the readjustments of the accounts of the foundations belonging to the "Obras Pias" (Pious Institutions) when the administration was turned over from the law firm of Hartigan to the new management?

A I did not intervene in the accounting. I intertervened only in the general administration of the "Obras Pias" (Pious Institutions).

Q Do you personally know whether these amounts were entered in the books of the "Obras Pias" (Pious Institutions) which were turned over to the new administration?

A No, sir.

Q Do you know Messrs. German and Cocullo?

A Yes, sir.

Q Did you have any intervention in the books of account of the "Obras Pias" (Pious Institutions) when Mr. Cocullo was there?

A No, sir.

Q You never intervened in the accounting?

A No, sir. Neither with the cash account.

Q Were you not the chief director of the personnel of the "Obras Pias" (Pious Institutions) when you were in the law firm of Mr. Hartigan?

A Yes, sir.

Q Did you not have any intervention or supervision of the accounting or of the funds of the "Obras Pias" (Pious Institutions) administered then by Hartigan & Kincaid?

A Yes sir, I had supervision more or less direct over Mr. Boquer who kept the accounts and the cash.

Q So that you personally do not know what Mr. Boquer did with the amounts which he received from the foundations of the "Obras Pias" (Pious Institutions)?

A No, sir, I only saw the accounts by chance.

MR. FERIA: That is all.

MR. GIBBS: We close our evidence with the offer of all the exhibits.

EVIDENCE FOR THE DEFENDANT

FATHER CALIXTO PRIETO, dominican priest, 59 years of age, Vice-Rector of the University of Sto. Tomas, Manila, after being duly sworn testified as follows:

DIRECT EXAMINATION BY

MR. FERIA: What position did you occupy in the month of February, 1922?

A I was Rector of the College of San Juan de Letran.

Q I am showing you this document which is marked Exhibit B in the stipulation of facts and which is a copy of a letter which appears to be signed by Calixto Prieto. Do you know the original of this letter?

A Yes, sir.

Q Who wrote the original of this letter?

A I did. The original is in my own handwriting.

Q In this letter you recommended or presented to His Grace, the Archbishop of Manila, a young man named Raul Rogerio Gonzales for the chaplaincy. Can you state to the Court if, when making this recommendation you took into account the qualifications of Raul Gonzales for the position of chaplain?

A No, sir I did not take into account the moral and intellectual qualifications of Raul Gonzales because I was told that he was a boy eight years of age. The boy was not presented to me, but as I knew that I was the patron of this chaplaincy I deemed it my duty to inform the Archbishop stating that Attorney Javier Gonzales had shown me a family tree from which it appeared that the boy Raul Rogerio Gonzales was the only legitimate heir to this chaplaincy and

it was in this sense that I wrote the letter introducing to the Archbishop the boy Raul Rogerio Gonzalez, heir to the chaplaincy. In this sense must the letter of introduction to the Archbishop be interpreted.

Q Did you have in mind the provisions of the Canon Law regarding the qualifications of the boy before he was presented to the Archbishop?

A As I stated before, the age of the boy prevented that. I did not take into account anything except that he was the heir to the chaplaincy.

MR. FERIA: That is all.

CROSS-EXAMINATION BY

MR. GIBBS: Are the contents of Exhibit B of the stipulation of facts, signed by you, true?

A Yes, sir.

MR. GIBBS: That is all.

FURTHER EXAMINATION BY

MR. FERIA: Do you personally know the facts which you made to appear in Exhibit B of stipulation of facts?

A What facts?

Q Did you have personal knowledge of the fact that Raul Rogerio Gonzales was the nearest relative of the founder Petronila de Guzman?

A I did not know of the rights of the boy except thru the documents shown to me by Attorney Javier Gonzales wherein it appeared that this boy was the legitimate heir.

Q So that your knowledge about the geneology of this boy is based only on the family tree shown to you by Attorney Javier Gonzales?

A Yes sir, I considered it correct but this has no reference to his moral qualifications as the Archbishop cannot appoint him until he attains the age stated by the Canon Law.

MR. FERIA: That is all.

FURTHER CROSS-EXAMINATION BY

MR. GIBBS: Were the documents proving the right of Raul Rogerio Gonzales to the chaplaincy shown to you and after investigation you wrote Exhibit B of the stipulation of facts?

Mr. FERIA: I object to the question because it calls for an opinion of the witness. Witness is not a judge to determine rights of plaintiff.

MR. GIBBS: After hearing the instructions given to me by counsel for the defendants, I withdraw the question.

Q Did attorney Gonzales show you that document?

A Yes, sir, he showed me a letter or document wherein the genealogy of the boy Raul Rogerio Gonzalez appeared and where it was shown that he was the legitimate heir. I considered that document to be genuine but did not examine it closely nor made investigations regarding it because Mr. Javier Gonzales was known to me from his boyhood when he was a student and he seemed to be a person worthy of belief and I believed the document to be genuine.

Mr. GIBBS: That is all.

FATHER ALBERTO STA. MARIA, 32 years of age, University of Sto. Tomas, Manila, after being duly sworn testified as follows:

DIRECT EXAMINATION BY

MR. FERIA: What position do you occupy in the University of Sto. Tomas?

A Dean and Professor of Canon Law.

Q Are you a doctor of Canon Law?

A Yes, sir.

Q Since when are you a doctor of Canon Law?

A Since June, 1917.

Q. Do you know latin?

A Yes, sir.

Q As a doctor of Canon Law, can you state to

court what laws now regulate matters pertaining to the Roman Apostolic Church, especially chaplaincies?

A The Code of Canon Law.

Q To what law do you refer?

A To this code called "Codex Juris Canonici" promulgated in 1917 and in force since 1918.

Q Showing you this document composed of four pages which for the purposes of identification is marked Exhibit 2. Do You know this document?

A It seems to be the translation of some provisions of the Canon Law.

Q Who made this translation?

A I think I did it about two months ago.

Q Can you translate to Spanish Canon 968 of the Canon Law?

A (Witness proceeds to translate) "only the male....."

MR. FERIA: Instead of allowing witness to proceed with the translation I am going to ask him the following: Please state to the court if this Exhibit 2 which is the translation made by you from Latin to Spanish of the canon the number of which appears in the document, is the correct translation of its original to Spanish?

A Yes, sir, Canon 968 is well translated, except those enclosed in parenthesis which is only an explanation and the words written in red ink must be written the same as the others. Canon 1457 does not contain words between parentheses because they are explanations and at the end there are two lines and a half which are not in the translation.

Q Can you translate those two lines?

A Yes sir. "And all of the priests approved in the contest if it refers to a benefit which must be conferred by means of a contest".

Q What is the meaning of the word "benefit"?

A The word "benefit" is the agregate of the pro-

perties of the church from the income of which the priest is supported.

Q What other nomenclature has the word chaplaincy in Canon Law? How is a chaplaincy considered in Canon Law, as a benefit or not?

A It is a kind of benefit.

MR. FERIA: I offer as evidence the document Exhibit 2 which is the correct and true translation of the original in Latin.

MR. GIBBS: No objection to the translation.

MR. FERIA: That is all.

CROSS EXAMINATION BY

MR. GIBBS: I understand that the laws the translation of which appear in exhibit 2 are cannon laws or rules promulgated in 1917 but did not become in force until 1918?

A Yes sir, as regards the Code recently promulgated because the general laws are old and this is so stated in the code itself in canon 6.

Q Please read canon 1481 and translate it?

A "After deducting the expenses of any kind whatever and excepting those prescribed in canon 472 No. 1, one half of the fruits of the vacant benefit shall be added to the dowry of the benefit or of the common mass, and the other half must be assigned for the benefit of the church or of the sacrarium, saving the custom by which all of the fruits must be used for the common benefit".

Q Will you read canon 472 mentioned as part of canon 1481?

A "No. 1, if the church is vacant the ordinary of the place must appoint to it as soon as possible the proper Vicar, and if it concerns one of a religious order the consent of the superior must be obtained, which is made by lot during vacation time, assigning to him part of the rents for his proper support."

MR. GIBBS: It being noon already, that is all for the present.

The Court adjourns to proceed again this afternoon.

(CAPTION AND TITLE OMITTED)

MANILA, P. I. MARCH 24, 1926.
AFTERNOON HEARING.

The above entiled case upon being called for trial today before the Honorable George R. Harvey, presiding over Branch III of this court, there

APPEARED:

Attorney A. D. GIBBS of the law firm "GIBBS & McDONOUGH" en behalf of the plaintiff.

Attorney FELICISIMO FERIA of the low firm FERIA & LA O on behalf of the defendant.

FATHER ALBERTO SANTA MARIA (continues to testify under the same oath)

CROSS-EXAMINATION BY MR. GIBBS CONTINUED

MR. GIBBS: Will you please read paragraph 2 of canon 1464 and translate it?

MR. FERIA: Your Honor, I object to this manner of cross-examination. This exhibit 2 was admitted as a correct and true translation and witness is now required to translate it again, with the true and correct translation at hand. Your Honor, if the purpose is to ascertain the knowledge of witness to make the translation, that is not the way to do it because he might have diverged as regards some point. He has admitted that it is a true and correct translation. What then is the purpose of reading again this canon already translated? It is only losing time.

Mr. Gibbs: When did I make such admission? I did not make any admission at all. I am entitled to cross-examine witness regarding the con-

tents of this article.

COURT: Objection overruled.

A "The usual way, to form an opinion, is to follow canon 1149 to inquire deligently about the person presented and to receive the propér information, even tho secretly if it necessary."

Q Will you read canon 1149 mentioned in the translation which you have just made and translate it?

A "The chosen postulate presented or appointed by any person for ecclesiastical offices do not strictly agree or substituted by a superior, inferior to the Roman Pontiff, unless they were previously found to be fit by the ordinary proper, even by examination. If this is the right or the office so demands and the ordinary deems it opportune."

Q Please read canon 1448 and translate it?

A "The right of patronage is the aggregate of all privileges with some obligations which through grant of the church concerned, come within the jurisdiction of the catholic founders of the church, chaplaincy or benefit or also of those who are empowered, in other words, assigns."

Q Now, canon 1455?

A All the article?

Q Yes.

A "The privileges of the patrons are: first, to present a clergyman for the vacant church or vacant benefit; second, saving the compliance with all the obligations and the honest maintenance of the beneficiary to receive support by equity from the rents of the church and of the benefit if there is an excess, provided the patron was not reduced thru his own fault to poverty, and this even if he has renounced to the right to the patronage in favor of the church, or a pension was reserved to the patron of the same foun-

dation, which is not sufficient to take him out of his need; third, to place, if so allowed by the lawful custom of the place, the arms of his family in the church of patronage and before the other laymen in the processions and in similar foundations a chair higher in the church but outside of the presbetery and without canopy."

Q Will you please read canon 1458 and translate the second paragraph of the same?

A "But if there be any question both regarding the right to present between the ordinary and the patron or between the patrons themselves and regarding the right of precedence between the persons presented, which question cannot be decided in a short time, the collation must be suspended until the end of the conrtoversy and meanwhile if it is necessary an "ecónomo" must be appointed to the vacant church or benefit."

Q What is the meaning of "ecónomo?"

A A substitute.

Q That is, an occupant?

A Provisional or acting.

Q Please read canon 1560?

A "The following have the necessary jurisdiction (court): first, the act of expoliation must be made before the ordinary of the place where the thing is; second, the buildings referred to in the benefit altho not residential before the ordinary of the place of the benefit.."

Q What is No. 3 of the same article?

A "Third, the buildings referred to in the administration before the ordinary of the place where the administration was carried out; fourth, the causes referred to from the inheritance or legacies before the ordinary of the place, the domicile of the testator unless it concerns a mere adjudication of the lega-

cy, in which case it shall be treated of according to the ordinary rules of jurisdiction."

MR. GIBBS: That is all.

MR. FERIA: What is the meaning of the word "ordinary"?

A "Ordinary" is one having ecclesiastical jurisdiction such as the Bishop, the Vicar General and others.

Q To make more clear your previous testimony in translating canon 1481, did you use the phrase "must be used for the common benefit of the diocese"?

A In what sense do you want me to explain it?

Q In this translation exhibit 2 you employed the word "erogados" which is much used in any dogma of the diocese?

A The word "erogado" means to "taste" or to "use". That is the equivalent.

MR. FERIA: That is all for the present.

If counsel for the plaintiff has any objection that the deposition of the Archbishop be attached to the records, I am going to read it to the Court so that the stenographer may make it of record.

MR GIBBS: I would like the Court to decide the objections and motions which I made when the deposition was taken.

STIPULATION (dictated by Attorney Feria).—It is stipulated and agreed by the parties that the deposition of the Most Illustrious Archbishop of Manila be submitted as evidence for the defendant in this case without the need of reading all the deposition to the Court, both parties submitting their objections and motions made for decision of the court when it renders judgment in this case.

MR. GIBBS: I reserve my right to except in case the court rules against me.

MR. FERIA: We except to any ruling of the court against us on the motions and objec-

tions stated in said deposition.

We offer in evidence the two pages of Book A of 1919, 1920 and 1921 entitled "Obras Pias (Pious Institutions) of the Church and Foundations" and marked exhibit 1 of the evidence of the defendant, and we request this Court that we be allowed to subtitute this book, because it refers to other accounts which have no connection with this case, with a copy duly examined by the attorney for the plaintiff, Mr. Gibbs.

MR. GIBBS: I have no objection to the copy because it is a copy, but I object to the admission of these pages of the book on the ground that the correctness of the same has not been duly established.

MR. FERIA: It has been proven.....

MR. GIBBS: And because it appearing from the evidence that the other accounts of the chaplaincy were concealed to the court, isolated parts like those appearing in those two pages should not be admitted.

MR. FERIA: Before replying, I move that the statement of Mr. Gibbs to the effect that the other accounts were concealed, be stricken from the records.

In support of the offer of this evidence we should like to state that not only witness Mr. Barahona has testified about this book that it was kept as the account book of the church from the time appearing in this exhibit 1, but also the same witness for the plaintiff testified that the entries appearing on page 69 of this book marked exhibit 1 is the readjustment of the final balance of all the data, entries and document referring to this chaplaincy made by a competent bookkeeper Mr. Serrano, and that he himself helped Mr. Serrano to strike the balance which appears in this page 69.

There can be no doubt of its genuineness because it was made before the Court. Here, reference was made to the entries pertaining to the years 1919, 1920 and 1921. This book was kept in a regular way and because of that we offer it and the same witness of plaintiff, Mr. Boquer who testified here and identified these pages of the book as the balance or readjustment of all the balances or expenses relative to the chaplaincy in question before the year 1919, that is, after the year 1911 up to the date when these entries were made in 1919, because everything pertaining to the expenses or income of this chaplaincy up to the year 1910 was readjusted and in one transaction paid to the chaplain then appointed up to the year 1910. I offer in evidence this book especially page 69 of the same.

COURT: What book?

A Book A, "Obras Pias (Pious Institutions) of the Church, Foundations 1919, 1920, 1921," brought here by witness Barahona at the request of counsel for the plaintiff himself.

MR. GIBBS: I object to the admission of page 69 of the book mentioned and of the book itself because it has neither been sufficiently identified nor the correctness of the accounts appearing on said page proven in any way, and because the entries are not supported by vouchers, nor do they appear to be entries made in the ordinary course of the administration of the chaplaincy, and also because the same are only entries for each year without the detail or vouchers, and also because it already appeared from the evidence that defendant has refused to produce the book here showing the real collections made for the property of the chaplaincy and the books wherein the payment of the insurance amount-

ing to more than ₱20,000 have been concealed.

MR. FERIA: I move that the last part of the statement having reference to the fact that it has been proven here that defendant has refused to produce some books and that it has concealed the payment of that amount be stricken from the records. That does not appear anywhere, it is a malicious insinuation of counsel. All of the books desired were asked for and they were all brought here. Your Honor knows well this fact.

COURT: Motion granted.

MR. FERIA: We offer in evidence....

COURT: The pages marked as exhibit 1 of the book entitled "Obras Pias (Pious Institutions) of the Chruch Foundations 1919-21" are not admissible as original evidence because it has not been shown that the accounts contained in said two pages were correctly kept, but said two pages may be admitted as part of the testimony in cross-examination of witness Daniel Boquer because said witness made reference to the said two pages of the book, and a copy of the entries or a copy of these two pages may be admitteed in lieu of the originals.

MR. GIBBS: I have no objection to the substitution of the copy in place of the two pages but only to their admission as evidence for the reasons already stated.

MR. FERIA: We offer as our evidence also exhibits A and I of the plaintiff.

MR. GIBBS: We object only to the correctness of the accounts appearing in these exhibits for the reason already stated and because the books were not properly kept and these accounts are not supported by any voucher, and it must also be noted that certain collections have been omitted, especially the col-

lection of the amount of insurance.

MR. FERIA: Your Honor, this document was brought here at the request of plaintiff himself and witness Barahona has testified here that it is an extract of all the books which he had in his possession and which were brought here when certain facts were sought to be proven. The testimony of the witness who has examined these books is admissible in evidence.

COURT: Exhibits A and I of the plaintiff will be admitted as exhibits of the defendant, not as original evidence but as part of the testimony of witness Barahona.

MR. FERIA: We offer also in evidence for the defendant Exhibit J of the plaintiff as part of the testimony of witness Boquer and of witness Mr. Barahona and of the defendant itself.

MR. GIBBS: We have no objection to the admission of the book mentioned as part of the testimonies of the witnesses, provided the entries are not admitted as competent evidence of the income and expenses of the chaplaincy.

COURT: Admitted.

MR. FERIA: We offer in evidence the portion of pages 41, 42 and 43, the back of pages 41 and 42 of record L-4 No. 25, provisional court of Manila, first part, which are the acts done regarding the provision of the chaplaincy founded by Mrs. Petronila de Guzman which became vacant due to the withdrawal of its last possessor Mr. Mariano F. de Guzman, in support of the contention of the defendant that he has discretion not to appoint a person as chaplain if he does not possess the qualifications which according to him he should have. In this record, it is shown that the petition of a descendant of the foundress

for whom a request was made to the Archbishop of Manila to be appointed chaplain was denied.

MR GIBBS: I object because it is impertinent.

COURT Objection sustained.

MR. FERIA: Let it be of record that counsel for the plaintiff does not object to its genuineness.

We except to the ruling and move that a copy of this two pages duly certified by the Clerk of the Court be attached to the record. For the same purpose, we offer in evidence Exhibit 3 pages 472, 473 up to 484, pages 474 and 472 up to the pages Nos. 474-472 up to pages 482-484 which is the resolution of the ecclesiastical court denying the petition filed on behalf of the person mentioned in the opinion of the Provisor contained in exhibit 2 that he be appointed chaplain of the chaplaincy in question because he does not possess the qualifications which according to the ecclesiastical court he must have.

MR. GIBBS: I object because it is immaterial, irrelevant and impertinent.

MR. FERIA: Do you have any objection regarding its genuineness?

MR. GIBBS: I have no objection as regards its genuineness.

COURT: Objection sustained.

MR. FERIA: Exception.—We request that a copy of said page be marked as exhibit 3 and after it is duly certified by the clerk of the court that it be attached to the record.

MR. FERIA: I am showing you this document which for the purpose of identification I ask that it be marked exhibit 4, will you state if you know it?

A Yes, sir.

Q Who made this document?

A I did.

Q From where did you translate it? Where did you get the original in order to translate it?

A From the original furnished by the Sacred Consistorial Congregation.

Q Have you ever had in your possession the original of this document?

A Yes, sir.

Q Will you state to the court if this is a true and correct translation of that communication of the Sacred Consistorial Congregation of the Archbishop of Manila?

A Yes, sir.

Q Where is that communication of the Sacred Consistorial Congregation of the Pope to the Archbishop, from which you made this translation?

A I sent it, together with this translation to Mr. Barahona a few days ago.

CAYETANO BARAHONA testifies under the same oath.

QUESTIONS BY

MR. FERIA: I am showing you this document which for the purpose of identification we request that it be marked exhibit 5 of the defendant, state if you know it?

A Yes, sir.

Q What is it?

A It is a true and exact copy of the original of the communication of the Sacred Congregation.

Q Where is that communication now?

A I gave it to His Grace, the Archbishop, and he kept in his safe.

Q Where is the Archbishop now?

A He is out of Manila.

Q When will he arrive?

A He will arrive this afternoon.

Q Did you carefully compare this copy with the original?

A The Archbishop himself made this petty corrections which can be seen here.

Q But did you ascertain the correctness of this document?

A Yes, sir.

MR. FERIA: That is all. Your Honor, in view of the fact that this letter is marked exhibit 1 of the deposition of the Archbishop, admitted here by plaintiff himself, this communication of which exhibit 5 is an exact copy and exhibit 4 a correct and true translation, and cannot be produced now because the Archbishop is out of Manila since a few days ago, we request that we be allowed to attach to the records the original tomorrow as soon as the Archbishop arrives in place of the copy which we temporarily offer now.

MR. GIBBS: I object to the admision of the letter of the Pope on the ground that it is irrelevant, impertinent and incompetent because the heir to the chaplaincy is sought to be deprived of the right created by a will of the year 1816. As regards the fact that it is merely a copy, I I have no objection to please the defendant and will allow them to produce the original of the letter tomorrow in place of this copy furnishing me a copy of the same.

MR. FERIA: I believe that Your Honor must rule on this objection in connection with the deposition of the Archbishop because it is a part of the deposition.

COURT: Considering that defendant is offering the original of exhibit 5, objection overruled and the document admitted subject to any other ruling which the court may make in deciding this case.

MR. GIBBS: With my exception.

MR. FERIA: I would like to state that the original is marked No. 1.

FATHER ALBERTO SANTA MARIA testifying again under the same oath.

QUESTIONS BY

MR. FERIA: Showing you this last page of the document offered as Exhibit A in the stipulation of facts in which there appears the decree of approval of the chaplaincy founded by Mrs. Petronila de Guzman by the then Archbishop of these Islands, which decree, among others, states that "erecting said amount in spiritual property and by perpetual title, making it as it does of the ecclesiastical jurisdiction," as Doctor in Canon Law will you state to the Honorable Court what is the meaning of "spiritual property" according to canon laws and principles?

A Spiritual property is the contrary of material property and altho in this decree it is stated "spiritual property" the phrase is understood in its broad sense because in its abstract sense it should say "annexed to a spiritual thing" such as the benefit according to canon 727 where, in treating of the simony, which is a crime against spiritual things, gives as an example the ecclesiastical benefit as a thing in such a manner united to things spiritual that without them they cannot exist.

Q And when the amount left by Mrs. Petronila de Guzman was converted into spiritual property, how was it considered from the time it was made into spiritual property? Did it continue to be the property of the founder under the canonical laws or not?

MR. GIBBS: I object, because it asks for a conclusion of law.

COURT: The court believes that witness may

state his opinion about that point. Objection overruled.

MR. GIBBS: With my exception.

A According to the ecclesiastical laws mentioned this morning in canon 149, the ecclesiastical authority receiving that property convert it into a juridical entity so that: first, there is a donation on the part of private persons who may impose some condition in the institution of this benefit. When this condition is made thru the decree, then the donation is made irrevocable so that it is a sort of a conditional donation, as for example: in order to be a benefit the beneficiary must be appointed from such or such family who comply with such and such obligations and thru the decree making it in benefit the donation is made.

MR. FERIA: When you testified this morning, did you state that before this canon law became in force the canon laws were controlled by the old laws?

A Yes, sir.

Q And did this canon law promulgated in 1917 and in force in 1918 substitue those old laws?

A Yes, sir.

MR. FERIA: That is all.

CROSS-EXAMINATION BY

MR. GIBBS: According to the ecclesiastical law, when the church accepts the foundation or the establishment of a chaplaincy under said conditions, must the church comply with these conditions?

A These conditions are the ones making the donation conditional and are complied with in the decree but afterwards the church assumes these obligations and enforces their compliance and for this purpose there are the superiors, the ecclesiastical tribunals, to compel private persons to comply with the

obligations which are no longer conditions. If the Archbishop did not impose as a condition that this chaplaincy must be given to such and such person then the donation was null.

Q But will you answer me categorically the question whether under the canon laws if the church accepts the administration of the property of a chaplaincy under certain conditions, these conditions must be complied with?

MR. FERIA: It seems that witness did not mention at all "administration."

A Yes, sir.

Q And according to canon law, once the administration of certain property belonging to a chaplaincy is accepted under certain conditions, may new canon laws be adopted by which these conditions are revoked?

A The church does not generally do this.

Q But is there any canon law which allows that once the administration of a property pertaining to a chaplaincy is accepted under certain conditions a new law is made allowing the repudiation of the conditions under which it was accepted.

MR. FERIA: Your Honor, it seems to me that the question is childish, begging my colleague's pardon. If a law prohibits one thing, it is of common sense that another law of the same class may repeal or modify it.

MR. GIBBS: In view of the statements made by counsel to his witness I withdraw my question.

Q Referring to page 8 of exhibit A (of the stipulation of facts), what amount of money was converted to spiritual property?

MR. FERIA: The best evidence, Your Honor, is the document itself.

COURT: Objection sustained.

MR. GIBBS: That is all.

MR. FERIA: We close our evidence with the offer of these exhibits.

MR. GIBBS: We have no evidence in rebuttal.

Under date of December 20, 1926, the lower Court rendered its decision as follows:

(CAPTION AND TITLE OMITTED)

DECISION

Plaintiff in an amended complaint filed April 6, 1926, alleges as follows:

"I. That he is a minor residing in the municipality of Baliwag, province of Bulacan; that he will be 14 years of age on the 16th day of September of the present year (1926); that Adelaida Gonzalez is his mother and duly appointed and authorized guardian ad litem for the purposes of this action and that the defendant is a corporation sole, domiciled in the City of Manila, P. I., and represented by His Grace, M. J. O'Doherty, apostolic archbishop.

"II.—Under and by virtue of the provisions of the last will and testament of Doña Petronila de Guzman, executed on the 13th of March, 1816, a collative chaplaincy (capellania colativa) was founded in this archdiocese of Manila; that said chaplaincy had and has for its capital a lot or parcel of land and the building of strong materials constructed thereupon, designated as numbers 210, 212, and 214 Calle Rosario, district of Binondo, Manila; that the foundation of said chaplaincy was duly approved and accepted by the proper ecclesiastical authorities, who agreed to all the conditions thereof. That a copy of that part of said last will and testament founding said chaplaincy marked Exhibit "A" for identification is hereto attached and made a part of this amended complain.

"III.—That said chaplaincy, founded, approv-

ed, and accepted as aforesaid, entailed and still entails the obligation on the part of the chaplain occupying the same, after being ordained as a priest, to celebrate sixty masses annually in the churches of Manila for the soul of the testatrix, Doña Petronila de Guzman, and those of her deceased father, mother, brothers, and sisters, and also entailed and still entails the obligation on the part of the defendant to appoint and maintain with the income of said property an occupant of said chaplaincy and to maintain and educate the heir apparent to said chaplaincy pending his appointment, not only for the purpose of fulfilling said obligation to celebrate masses for the souls of the dead but also to properly equip and prepare the heir apparent for the performance of his duties.

"IV.—That it is provided in said will that said chaplaincy should be occupied by the nearest relative in succession of the first chaplain, Esteban de Guzman.

"V.—That the last occupant of said chaplaincy was plaintiff's father, Angel Gonzalez, who was appointed by the defendant on June 20, 1901, and who resigned on September 22, 1909; that in view of said resignation the defendant declared the chaplaincy in question to be vacant on and after December 6, 1910, and since which time it has remained unoccupied.

"VI.—That plaintiff is the eldest son of the said Angel and Adelaida Gonzalez, and as such, the nearest relative in succession to the first chaplain, Esteban de Guzman, and the legitimate successor to said chaplaincy; that plaintiff possesses the necessary intelligence, aptitude and spiritual inclination for the career of priesthood; that the testimonials of various Roman Catholic Priests as to plaintiff's aptitude and inclination for the priesthood marked Exhibits "B", "C", "D" and "E" for identification are hereto attached and made a part

of this amended complaint; and that there is no other person who has or claims to have the right to said chaplaincy.

"VII.—That in accordance with the will founding the chaplaincy in question and with the canon law governing chaplaincies at the time of the approval and acceptance by the ecclesiastical authorities of the conditions under which said chaplaincy was founded, the defendant in its capacity as the administrator of the property of said chaplaincy accounted for, and delivered to the last chaplain Angel Gonzalez, all of the net income of said property from the 17th of November, 1897 the date of the resignation of his predecessor, to the 20th of June, 1901, the date of his appointment, as chaplain, as well as all the income thereof during the period of his incumbency; the defendant as such administrator, having effected with the said Angel Gonzalez a final settlement of the account of said chaplaincy up to December 31, 1910.

"VIII.—That the only right, title or interest of the defendant in or to said property is as administrator for the incumbent of said chaplaincy when occupied or for the heir apparent thereto when vacant, and which administration defendant arrogated to itself in the year 186[illegible] without any authority therefor in the will of the foundress.

"IX.—That subsequent to the setlement of accounts set forth in the seventh paragraph of this amended complaint, the defendant in the month of September 1914 wrongfully obtained and caused to be registered in its own name in the registry of property of the City of Manila, a Torrens title in fee simple to said property free and clear of the trust imposed upon it and upon the defendant as its administrator for the maintenance of said chaplaincy. That a description of the property as thus wrongfully registered marked Exhibit "F" is hereto attached and made a part of this amended complaint.

"X.—That since said settlement of December 10, 1910, with the plaintiff's father as the last chaplain, the defendant, in its capacity as such administrator, has been and still is collecting the rents of said property which as plaintiff is informed and believes and therefore alleges the fact to be have amonted and still amount to approximately P12,000.00 per year. That defendant has wrongfully and unlawfully used the rents thus collected by it as administrator for purposes foreign to those stipulated in the foundation of said chaplaincy and through the misguided zeal of its agents has falsified its books of administration so as to conceal the income of said property and particularly over twenty thousand pesos of fire insurance collected by it in the year 1912 on account of the destruction by fire of the buildings of the chaplaincy.

"XI.—That it is the duty of the defendant as such administrator to account to plaintiff for the amount of rents and fire insurance thus collected.

"XII.—That plaintiff through his parents and attorneys has repeatedly made application to the defendant for appointment to said chaplaincy; that at first no objection was made to plaintiff's right to or fitness for said office, and defendant promised to appoint him, but later refused to do so, alleging at first that he was too young and later declining to state its reasons for such refusal; that the language of the will establishing said chaplaincy, and particularly the eleventh paragraph thereof, expressly discloses the intention of the foundress to fill said chaplaincy with minors without limitation as to their youthfulness; that Esteban de Guzman, the first chaplain chosen by the foundress Petronila de Guzman was less than 14 years of age on the date of his appointment by the defendant Archbishop of Manila.

"XIII.—That the plaintiff has no property except his right to the chaplaincy in question, and

his parents have no means with which to maintain and educate him appropriately for the career of priesthood.

"XIV.—That plaintiff is entitled to a reasonable allowance for his maintainance and education from the income of the chaplaincy pending his appointment as chaplain; and that considering the amount of said income, as alleged in paragraph ten of this complaint, and the large sums which the defendant should have on hand, the sum of P1,000.-00 per month would be a reasonable allowance.

"XV.—That the defendant corporation unlawfully neglects the performance of an act which the law specially enjoins as a duty upon it as the ecclesiastical appointive power and as administrator of the property constituting the capital of said chaplaincy, to-wit, the appointment of the plaintiff as the rightful successor to said chaplaincy and the payment to him of the income of said property since defendant's settlement with the last chaplain and the maintenance and education of plaintiff from said income pending such appointment; that the defendant corporation unlawfully excludes plaintiff from the use and enjoyment of a right and office to which he is entitled, to wit: the office of chaplain and right to the use of the income from said chaplaincy, and that there is no other plain, speedy and adequate remedy in the ordinary courts of law.

"WHEREFORE, plantiff prays judgment:

"(1) Declaring the plaintiff the rightful and lawful heir to said chaplaincy and to the income from the property constituting its capital; (2) Definitely declaring and establishing the right of the plaintiff and of his successors under the terms of said will to be appointed to and receive the income of said chaplaincy at any time during their infancy when said chaplaincy may be vacant and that pending such appointment they shall be entitled to receive for their maintainance and edu-

cation all the income of said property except a reasonable sum, not to exceed P300.00 per year for the saying by other priest of the sixty masses provided for in the will of the foundress to the end that controversy be obviated as to the rights of the plaintiff and his successors as heirs of said chaplaincy and as to the duties of the defendant as administrator of said chaplaincy and of its property and to the end that the will of the foundress of said chaplaincy be carried out and that the masses therein provided for may be said for the soul of said foundress and for those of her relatives therein specified; (3) Declaring the administrative or trust character of defendant's title to said property and ordering that it be so recorded in the registry of property of the City of Manila; (4) Granting a peremptory order against the defendant commanding it and His Grace, M. J. O'Dougherty, Apostolic Archbishop as its sole representative immediately after the receipt of such order to appoint the plaintiff as chaplain of said chaplaincy and to pay over to his guardian ad litem for his use and benefit, all the rents and income in the hands of the defendant as administrator of said property with an itemized accounting of the administration of said property; (5) That defendant be immediately ordered to show cause why it should not pay P1,000.00 per month to the guardian ad litem of the plaintiff for the maintenance and legal expenses of the latter pending the trial and determination of this action; (6) In the event the court finds that defendant has been disqualified to administer the property belonging to the chaplaincy in accordance with the terms of the foundation thereof, by alleged canon laws edicts or regulations issued and promulgated by the Roman Catholic church subsequent to such foundation, then plaintiff prays that the defendant be removed as administrator of the property of said chaplaincy and that his mother and guardian ad litem, Adelaida Gonzalez, or

some other suitable persons, be appointed to administer the property during the minority of the plaintiff in accordance with the will subject only to the obligation to pay over to the defendant or to some priest designated by it, a reasonable sum, not to exceed ₱300.00 per year, for the saying of the masses provided in the will of the foundress, and that such appointment take effect and be in force from the date of the decision of this Honorable Court; and (7) Plaintiff further prays that judgment be rendered against defendant for the total income of said property from the 31st of December, 1910, less necessary expenses of administration and for costs of suit and that the plaintiff be granted such other and further refief as may be just and equitable and as may finally determine the rights and duties of the plaintiff and his successors in interest and of the defendant in relation to said chaplaincy."

The pertinent parts of the exhibits attached to the amended complaint are incorporated into the stipulation of facts and the evidence for plaintiff.

Defendant's amended answer is a general denial of each and every allegation of the complaint, together with the following special defenses:

I

"FIRST SPECIAL DEFENSE

"That the chaplaincy in question was founded, according to the will of the testatrix set forth in her testament, as an ecclesiastical collative chaplaincy and was accepted as such by the church authorities; that from the time that this ecclesiastical chaplaincy was constituted, it became subject to the laws of the Roman Catholic Apostolic Church or Canon Law, and the properties left for its maintenance became spiritual properties or the exclusive property of the church by perpetual title, sub-

ject only to the charges imposed by the testatrix; that the appointment of chaplain for said chaplaincy, as well as the determination of the qualifications that the candidate for said office must have, are governed and regulated by the ecclesiastical or Canon Law; that according to said Code it lies within the sole and exclusive jurisdiction of the church authorities to solve the questions that arise or may arise in connection with said chaplaincy, and therefore this Hon. Court has no jurisdiction to take cognizance of the matter in litigation in this case.

II

"SECOND SPECIAL DEFENSE

"That the will of the foundress attached to the complaint as Exhibit "A" upon which plaintiff's action or claim is based, does not provide (as contended by the plaintiff's attorneys) that it is the will of the testatrix that the successor or successors to the first chaplain, Esteban de Guzman, be selected solely from among the nearest relative, or has to be always a nearest relative, if any, of Esteban de Guzman, and consequently the plaintiff has no cause of action against the defendant to compel the latter to appoint him chaplain of the chaplaincy in question.

III

"THIRD SPECIAL DEFENSE

"That in the tenth clause of said will Exhibit "A" of the complaint it is stated that it is the will of the testatrix that her executors should appoint the father president or rector of the San Juan de Letran College as head of the chaplaincy, which is the subject-matter of this action, and said executors did so; that according to the plain and conclusive provisions of Canon 1148 of the Canon Law, which, as alleged in the first special defense and is reproduced here, governs and regulates the matter, it is an essential and indispensable requi-

site, in order that the bishop or diocesan prelate may appoint a person chaplain of an ecclesiastical collative chaplaincy, like the one in question, that the patron appointed by the will of the foundress be the one to select and present such person or candidate to the diocesan prelate for that purpose within the period of six months from the time that the chaplaincy has become vacant, and it is not alleged in the complaint that the patron of the chaplaincy in question appointed by the will of the testatrix has presented the plaintiff to the defendant within said period in order that the latter should appoint him chaplain of said chaplaincy, and therefore the plaintiff does not allege in his complaint facts sufficient to constitute a cause of action.

IV

"FOURTH SPECIAL DEFENSE

"That the Canon Law is the law applicable to the instant case, as regards the qualifications that a person must have in order that he may be appointed chaplain of a chaplaincy and receive the ecclesiastical benefits and pensions appurtenant thereto, and according to canon 118 of the Canon Law, one of the qualifications that the candidate or applicant must have in order that he may be appointed chaplain of an ecclesiastical collative chaplaincy is that he must be over fourteen years of age and be a clergyman, and according to canon 936 of the same Code, nobody can enter the clergy or be a clergyman without having already begun the course in theology, which presupposes the course in philosophy, and the latter, in turn, the completion of the subjects for the degree of Bachelor of Arts; that the plaintiff is not a clergyman or does not have qualifications above mentioned, and the defendant has refused to appoint him chaplain, as he does not have the necessary qualifications.

V

"FIFTH SPECIAL DEFENSE

"That under the elementary principle of the ec-

clesiastical or Canon Law, the chaplain is entitled only to the benefits of a chaplaincy pertaining to the time in which he occupies the position, and the diocesan prelate (and in this case the defendant) has the power to authorize the use, for other similar pious purposes, of the ecclesiastical receipts or incomes of the chaplaincies, like the one in question, during the time that the offices of chaplain therein are vacant, and the defendant in this case, following the custom established in this archdiocesis concerning the use of the receipts of vacant chaplains, has disposed of the incomes of said chaplaincy during all the time in which the office of chaplain therein was vacant, using the same for pious purposes similar to those for which the testatrix has founded the chaplaincy.

VI

"SIXTH SPECIAL DEFENSE

"That the defendant in view of the fact that the plaintiff does not have the qualifications required by the Canon Law in order to be appointed chaplain, has, before the filing of this complaint, informed and promised the plaintiff or his parents that he was willing to defray the expenses of his studies and other necessary expenses of the plaintiff in a college or seminary until he shall be ordained and be in a position to be appointed chaplain of the chaplaincy in question, but the plaintiff, or his parents, has not accepted it and later has filed the herein complaint."

Before the trial of the case the parties filed the following:

"STIPULATION OF FACTS

"The parties to the above entitled action, by their respective undersigned attorneys stipulate the following facts:

"1. That on the 13th day of March, 1816, Dña. Petronila de Guzman executed her last will and Testament, the pertinent part of which reads

as follows:

"In this Town of Binondo this thirteenth day of March, one thousand eight hundred and sixteen, A. D., I, Da. Petronila de Guzman, a resident of this said town, finding myself sane and *fearful of death due to my advanced age*, believing as I truly do in the Supreme Mystery of the Holy Trinity, Father, Son and the Holy Ghost, three distinct persons and only one true God, and in all others that I believe are preached and taught by our Holy Mother, the Roman Catholic Apostolic Church, under whose faith and belief I have lived and profess to live and die as a Catholic and a faithful devotee, and I invoke for my intercessor the Queen of the Angels the Most Holy Mary Mother of God and Our Lady, My Holy Guardian Angel, the saint of my namesake and of other saints of my devotion that they intercede with the Lord for the forgiveness of my sins and present my soul to eternal glory when I leave this world. Wherefore, and for the legal effects hereof, I sign this my will and testament, as follows:

"Ninth Item:—I declare and charge that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister Da. Vicenta de Guzman we have constructed with our own money, the expenses of which amount to one thousand six hundred pesos without including the value of the lot on which it is erected, and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. Jose Telesforo de Guzman and in his default, the nearest relative, and in default of the latter, a collegian (colegial) of San Juan de Letran, who should be an orphan *mestizo*, native of this said town, and I request the Father chaplain to celebrate sixty masses annually, which should

be said in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in behalf of the souls of my father, Dn. Tomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and my brothers and sisters, and for me, the testatrix after my days.

"Tenth Item:—It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.

"Eleventh Item:—I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain."

"Eighteenth Item:—I revoke and annul all the wills and powers to make will and other testamentary provisions that before this date I may have made and executed before any clerk of court in order that they should not be given any effect nor faith in any action or extrajudicially, except this will and testament whose clauses it is my will that they be kept, complied with and performed and in testimony hereof I sign

"PETRONILA DE GUZMAN"

"2. That in accordance with said will a collative chaplaincy (capellania colativa) was founded in this archdiocese of Manila under the terms and conditions stated in the document, a true copy of which is attached hereto as Exhibit "A", and made a part hereof.

"3. That the property referred to in said Will, as well as in said Exhibit "A" as the capital of the sad chaplaincy, consists at the present time of the lot and building designated as Nos. 210, 212, and 214 Calle Rosario, Manila.

"4. That the first chaplain or beneficiary of the chaplaincy in question was Esteban de Guzman, son of Jose Telesforo de Guzman; that the said Esteban de Guzman was born on August 4,

1806, and was formally appointed chaplain by the ecclesiastical authorities on June 16, 1820.

"5. That the second chaplain or beneficiary appointed by the Archbishop of Manila to the chaplaincy in question was Vicente de Guzman, son also of Jose Telesforo de Guzman, and a brother of the first chaplain Esteban de Guzman; that the said Vicente de Guzman was born on November 22, 1816 and was appointed chaplain on April 7, 1838.

"6. That the third chaplain or beneficiary of the chaplaincy in question was Mariano de Guzman, son of Juan Bautista de Guzman, and grandson of Telesforo de Guzman. He was born on October 11, 1867.

"7. That the fourth chaplain or beneficiary of the chaplaincy in question was Fernando Maniquis, son of Regina de Guzman, and grandson of Tomasa de Guzman, who was a sister of the first chaplain Esteban de Guzman. He was born on May 30, 1870, and appointed chaplain on May 23, 1890 and resigned on November 17, 1897.

"8. That the fifth chaplain or beneficiary of the chaplaincy in question was Angel Gonzalez, son of Escolastica de Guzman, and grandson of Tomasa de Guzman, a sister of the first chaplain Esteban de de Guzman. He was born on August 18, 1882, was appointed chaplain on June 20, 1901 and resigned as such effective December 6, 1910. Since his resignation, the chaplaincy in question has remained vacant up to this date.

"9. That according to the new canon law promulgated in the year 1918, 'las capellanias o beneficios simples se confieren a clerigos del clero secularo;' that in order to be a "clerigo" one must have 'prima tonsura'; that in order to have 'prima tonsura' one must have begun the study of theology; and that in order to study theology, one must be a 'bachiller.'

"10. That none of the five chaplains above

mentioned was a 'clerigo' at the time of his appointment as such to the chaplaincy in question.

"11. That according to the record of the 'Administracion de Obras Pias de la Sagrada Mitra', Angel Gonzalez, the fifth chaplain or beneficiary above mentioned, received the income from the property of the capellania in question during the period from November 17, 1897 to June 20, 1901, as well as the income from said property during his incumbency in office as chaplain that is to say, from June 20, 1901 to December 31, 1910.

"12. That the allegations of paragraph 1 of the complaint are true.

"13. That the plaintiff Raul Rogerio Gonzalez is the legitimate son of said Angel Gonzalez and Adelaida Gonzalez, and was born on September 16, 1912.

"14. That on February 25, 1922, the Rector of the San Juan de Letran College sent to the defendant a letter, a true copy of which is hereto attached, marked Exhibit 'B' and made a part hereof.

"15. That on March 20, 1922, the defendant, in reply to a verbal petition made by Angel Gonzalez, father of the plaintff, wrote to him the letter which is hereto attached, marked Exhibit 'C', and made a part hereof, and the defendant refused to appoint the plaintiff as chaplain of the chaplaincy in question for the reasons set forth in said letter.

"16. That the said canon law mentioned in paragraph 9 hereof provides also as follows:

'Caput 11 De subiecto sacrae ordinationis.

"Can. 968.

'1.o Sacram ordinationem valide recipit solus vir baptizatus; licite licite autem, qui ad normam sacrorum canonum debitis qualitatibus, indicio proprii Ordinarii, praeditus sit, neque ulla detineatur irregularitate aliove impedimento.

'2.o Qui irregularitate aliove impedimento detinentur, licet post ordinationem etiam sine propria cumpa exorto, prohibentur receptos ordines exercere.

'Can. 1457.

Praesentatio, nullo iusto obstante impedimento, sive agatur de patronatu laicali sive de ecclesiastica et mixto, fieri debet, nisi brevius tempus lege fundationis vel legitima consuetudine praescriptum fuerit saltem intre quotuor menses a die quo si cui ius est instituendi patronum certiorem fecerit de vacatione beneficit et de sacerdotibus qui ni concursu fuerunt probati, si agatur de beneficio quod per concursum conferrit debet.

'Can 1464.

'1.o Praesentatio fiere debet loci Ordinario, ciuis est iudicare utrum idonea sit persona praesentata.

"2.o Ordinarius ad suum formandum iudicium, debet ad norman can. 149 de persona praesentata diligenter inquirere et opportunas notitias, etiam secretas, si opus fuerit, assumere.

'3.o Ordinarius non cogitur patrono patefacere rationes cur personam praesentatam admitiere non possit.'

'Can. 1354.

'1. Unaquaeque dioecesis in loco convinienti ab Episcopo electo Seminarium seu collegium habeat in quo, pro modo facultatum et dioecesis amplitudine, certus adolescentium numerus ad statum clericalem instituatur.

'Curandum ut in marioribus praesertim dioecesibus bina constituantur Seminaria: minus scilicet, pro pueris literarum scientia imbuendis, maius pro alumnis philosophiae ac theologiae vacantibus.

'3. Si constitui Seminarium diocesanum nequeat, aun in constituto Seminario conveniens ins-

titutio, praesertim ni philosophicis ac theologicis disciplinis, desideratur; Episcopus alumnos in alienum Seminarium mittat, nisi Seminarium interdiocesanum vel regionale autorite apostolica, constitutum fuerit.

Can. 1364.

1.o Praecipnum locum obtineat religionis disciplina, quae, modo singulorum ingenio et aetati accomodate, diligentisimo explicetur;

"2.o Linguas praesertim latinas et patriam alumni accurate addiscant,

'3.o Ea in certeris disciplinis institutio tradatur quae conveniat communi omnium culturae et statui clericorum in regione ubi alumni sacrum ministerium exercere debent.

Can. 1365.

'1. In philosophiam rationalem cum affinibus disciplinis alumni per intergrum saltem biennium incumbant.

'2. Cursus theologicus saltem integro quadriennio contineatur, et praeter theologiam dogmaticam et moralem, compleeti praesertim debet studium sacrae Scripturae, historae ecclesiasticae, iuris canonici, liturgiae, sacrae eloquentiae et cantus ecclesiastici.

'3. Habeantur etiam lectiones de theologia pastorali, addits practicis exercitationibus praesertim de ratione tradendi pueris aliisve catechismum, audiendi confessiones, visitandi infirmos, assistendi moribundis.

Can. 1448.

Ius patronatus est summa privilegiorum, cum quivusdam oneribus, quae ex Ecclesiae concesione competunt fundatoribus catholicis ecclesiae, cappellas aunt beneficii, vel etiam us qui ab uho causam habent.

"Can. 1455. Privilegia patronorum sunt:

'1.o Praesentandi clericum ad ecclesiam vacantem vel benefecium vacans;

'2.o Salva executione onerum et honest honesta beneficiari sustentatione, alimenta ex aequitate obtinendi ex ecclesiae vel beneficii reditibus, si qui supersint, quoties patronus ad inopiam nulla sua culpa redactus fuerit, etiamsi ipso iuri patronatus renuntiaverit in commodum Ecclesiae, vel pensio ni limine fundationis ipsi patrono fuerit reservata, quae ad siblevandam eius inopiam non sufficiat;

'3.o Habendi, si ita ferant legitimae locorum consuetidines, in sui patronatus eclesa temma gentis vel familiae, praecendentiam ante ceteros laicos in processionibus pel similibus functionibus, digniorem sedem ni ecclesia, sed extra presbyterium et sine baldachino.

Can. 1465.

'1.o Si praesentatus non idoneus fuerit repertus, patronus, dumodo tempus utile ad praesentandum sua negligentia lapsum ne sit, potest alium intra tempus de quo in can. 1457 praesentare; sed si no hio quidem idoneus repertus fuerit, ecclesia vel beneficium pro eo casu fit litterae collationis, nisi patronus vel praesentatus intra decem dies a significatione recusationis recursum a iudicio Ordinari ad Sedem Aposticam interposuerit; quo pendente, suspendatur, collatio usque ad finem controversiae et enterim, si opus sit, oeconomum ecclesiae vel Beneficio vacanti Ordenarius praeficiat.

'2. Praesentatio labe simoniaca infecta, est ipso iure irrita, et etiam institutionem forte subsecutam irritam reddit.

Can. 1481.

'Deductis cuiuslibet generis expensis et salvo praescripto can 472, n. I, fructus beneficii vacantis pro altera dimidia parte acrees contioti beneficii vel massae communi, pro altera cedunt fabricae

ecclesiae seu sacrario, salva legitima consuetudine qua fructus omnes ni bonum commune dioeceseos erogentur.

'Can. 1458.

'1.o Si intra praescriptum tempus praesentatio facta non fuerit, ecclesia vel beneficium pro eo casu fit liberae collationis.

'2. Sivero lis, quae intra utile tempus dirimi nequaet, exoriatur sive circa ius praesentandi inter Ordinarium et patronum vel inter ipsos patronos, sive circa ius praelationis inter ipsos praesentatos, suspendatur collatio usque adfinem contraversiae, et interim, si opus sit, oeconomum ecclesiae vel beneficio vacanti Ordinarius praeficiat.

'Can. 1466.

'1. Legitime praesentatus, et idoneua reportus, acceptata presentatione, ius habet ad canonicam institutionem.

'2. Ius concedendi canonicam institutionem proprium est Ordinario loci, non autem Vicarii Generalis sine mandato speciali.

'3. Si plures et omnes idonei praesentati sint, Ordinarius eligit quem magis idoneum ni Domino iudicaverit.

'Can. 1560.

'Forum necessarium habent:

'1.o Actiones de spolio, coram Ordinario loci rei sitae;

'2.o Causae respicientes beneficium, quamvis non residentiale, coram Ordinario Loci beneficii;

'3.o Causae quae versantur circa administrationem, coram Ordinario loci ubi administratio gesta est;

'4.o Causae quae respiciunt hereditates sunt legata pia, coram Ordinario loci domicilii testatoris, nisi agatur de mera exsecutione legati, quae videnda est sacundum ordinarias competentiae normas.

"The parties reserve the right to introduce such further evidence during the trial as they may see fit.

"Manila, P. I., March 11, 1925.

"FERIA & LA O,
By (Sgd.) F. FERIA
Attorneys for defendant,
China Bank Bldg., Manila."

"GIBBS & McDONOUGH,
By A. D. GIBBS
Attorneys for the plaintiff,
302 Roxas Bldg., Manila."

Plaintiff's evidence is subsantially as follows:

Fernando Maniquis testified that he knows the chaplaincy in question; that he was the fourth chaplain thereof; that Raul Rogerio Gonzalez, plaintiff in this case, is his nephew, being the son of his cousin, Angel Gonzalez de Guzman; that he has known Raul Rogerio Gonzalez since his birth; that plaintiff's parents have three children of whom plaintiff is the eldest; that plaintiff is the nearest male unmarried relative of the first chaplain, Esteban de Guzman, being the same degree as the children of witness; that the eldest son of witness was fourteen years of age at the date of the trial; that no one of his children is a candidate for appointment as chaplain, and that, as their father, witness renounces such candidacy; that according to his observation plaintiff is a bright boy; that witness was a chaplain for about five years but could not tell exactly what his age was when he became a chaplain; that he was then a student of San

Juan de Letran College.

The witness further testified:

Q. While you were studying to be a priest, did you know what were the conditions necessary to be a priest?

A. Before, like my other companions in Letran, nothing was required to be a priest except to study.

Q. Do you know what subjects were studied to prepare for the priesthood?

A. From what I knew, the first chaplains did not know anything except the Christian doctrine. That was the only thing needed to be known when I was tonsured.

Q. Do you know what were the requirements regarding the moral qualifications of the applicant?

A. It was necessary that he be of good moral character. (Sten. notes p. 5).

Q. Do you know what intellectual capacity is necessary to be a chaplain?

A. When I came to apply for the chaplaincy, they did not require any condition more than to learn the Christian doctrine (doctrina cristiana.)

Q. Do you know the mental capacity which was required to be a chaplain at the time you were appointed chaplain?

A. Yes, sir.

Q. Please state to the court if Raul Rogerio Gonzalez has the intellectual capacity necessary to be a chaplain, judging from the requisites which were exacted when you were appointed the fourth chaplain?

A. I believe Raul Rogerio Gonzalez posesses more intellectual capacity than the previous chaplains.

Q. Answer the question categorically.

A. I believe he has.

Q. Please state to the court whether you were

a clergyman already at the time you were appointed the fourth chaplain of the chaplaincy in question?

A. No, sir." (pp. 8-9, s. n.)

On cross-examination, this witness testified that he did not know personally all of the relatives of the first chaplain, Esteban de Guzman, but that he knew them by names because he had seen the geneological tree of the family with respect to this chaplaincy; that he did not know all the relatives of Petronila de Guzman the foundress of this chaplaincy, and that if the attorneys had not shown him the geneological tree, he would not have known each and every one of the relatives of the first chaplain; but that in view of the fact that he was the fourth chaplain and Angel Gonzalez was the fifth chaplain, their children were the only nearest relatives to Esteban de Guzman; that when he was appointed chaplain he was a boarding pupil (*colegial*) of the San Juan de Letran College and had no tonsure yet. On further cross-examination, this witness testified:

"CROSS—EXAMINATION:

Q. In answer to a question whether or not you knew the intellectual conditions required to be a priest, you said that no requisite whatever was required to be a priest?

A. Not to be a priest, but to be a chaplain, nothing was required because I understand that this chaplaincy is a hereditary chaplanicy, that is to say, all the relatives are the ones who are to receive the income of the property belonging to the chaplaincy." (p. 18, s. n.)

Raul Rogerio Gonzalez, the plaintiff, 14 years of age, testified that his father's name is Angel Gonzalez and his mother's name is Adelaida Gonzalez; that he goes to public school, and is in the sixth grade, where he stdudies arithmetic, geography, spelling, phonics, English, conversation and good manners and right conduct; that he obeys his parents. Said witness further testified:

Q. Have you any desire as regards your future career?
A. Yes, sir.
Q. What do you want to be?
A. I want to be an archbishop.
Q. State whether or not you want to be a priest before you become an archbishop?
A. Yes, sir, I want to be a priest first.
Q. Please state whether or not you want to study so as to qualify as a priest.
A. Yes, sir.
Q. Do you know whether your parents will be able to support you while preparing for the priesthood?
MR. FERIA: Objected to, witness is incompetent to testify about that.
COURT: Objection overruled.
MR. FERIA: Exception.
A. My parents are poor. (Sten. Notes, p. 17.)

On cross-examination this witness testified that it is not true that he prefers to get married when he becomes of age; that he does not know what a priest is; that he knows that his parents have no property because they have no money to spend for him, and that it was his aunt who bought his clothes. On re-direct-examination he testified that he does not know all the subjects he has to stu-

dy in order to prepare himself for a chaplaincy except one—theology—which on cross-examination he said that he does not know what it is.

Cayetano Barahona, accountant of THE ROMAN CATHOLIC ARCHBISHOP OF MANILA was called by plaintiff for the purpose of obtaining information as to the income and expenses of the property of the chaplaincy in question.

Plaintiff called the witnesses W. A. Burn, Daniel Boquer and Phil. C. Whitaker for the purpose of proving that the defendant collected the amount of an insurance policy on the property of the chaplaincy, which amount so collected does not appear in the accounting rendered by witness Cayetano Barahona.

Judge Simplicio del Rosario, of the Court of First Instance of Manila, was called as a witness for plaintiff, and he testified as follows:

"Q. Did Your Honor intervene as judge in the case of Angel Gonzalez vs. Mons. Harty, etc., No. 10074 of this court?

"A. Yes, sir.

"Q. Please refresh your memory and try to remember the judgment rendered by Your Honor dated June 12, 1914, and state if you can identify this book of income and expenses belonging to the chaplaincy founded by Petronila de Guzman and offered as Exhibit 1 in that case No. 10074?

"A. Yes, sir, I remember it.

"Q. Refreshing your memory with this judgment rendered by you and appearing at page 156 of case No. 10074 please state whether or

not there was anything written on pages 43 to 49 of this book Exhibit J?

"A. If this is the same book which was offered and regarding which the judgment was rendered, after this page 43 there was nothing written and it was because of this that on page 156 I stated that as regards the income of the property for the period of 1907 to 1910 no account was kept by the defendants—of the administration of the chaplaincy—during that period. After these words "December 31, 1906" everything was blank." (Sten. Notes pp. 79, 80).

The documentary evidence introduced by plaintiff consists of Exhibit A of the complaint, which exhibit is a copy of the pertinent part of the will of Petronila de Guzman; Exhibits B, C, D, and E of the complaint, which exhibits are letters addressed by different Roman Catholic priests to the Archbishop of Manila, recommending the appointment of plaintiff as chaplain of the chaplaincy in question; Exhibit F of the complaint is a certified copy of the Torrens title to the property in question; Exhibit A of the evidence is a statement of account prepared by the witness Barahona, which exhibit was offered by plaintiff without admitting its correctness; Exhibit B to Exhibit G, inclusive, of the evidence, consist of correspondence between plaintiff's attorneys and defendant's attorneys referring to the efforts of plaintiff's attorneys to have the present plaintiff appointed by defendant to the chaplaincy in question; Exhibit I is another statement of account prepared by witness Barahona, which was offered by plaintiff without admit-

ting its correctness; Exhibit J is one of the books of the chaplaincy in question; Exhibit K is the appointment of plaintiff's father as chaplain; Exhibit L is the decision of Judge Simplicio del Rosario in Civil Case No. 10,074 of this court, entitled Gonzalez vs. Harty, et al., and the decision of the Supreme Court in the same case as reported in Volume 32, p. 328 of the Philippine Reports.

Defendant's evidence is substantially as follows:

Calixto Prieto testified that in February, 1922, he was Rector of the San Juan de Letran College; that the original of the letter, Exhibit B attached to the stipulation of facts, is in his own handwriting; that in writing said letter to the Roman Catholic Archbishop of Manila, recommending or presenting the plaintiff for the chaplaincy, he did not take into account the moral and intellectual conditions of plaintiff; that plaintiff was not presented to him, but he knew that as he (witness) was the Patron of this chaplaincy it was his duty to present said applicant to the Archbishop; that he only satisfied himself that the boy was heir to the chaplaincy.

On cross-examination this witness admitted that the statement contained in Exhibit B, signed by him, is true.

Fray Alberto Santa Maria testified that he is Dean and Professor of the Canonical Faculty of the University of Santo Tomas, Manila; that he has

been a Doctor of Canonical Laws since June, 1917; that he knows Latin; that as Doctor of Canonical Laws he knows that the things pertaining to the Roman Catholic Church, and especially to chaplaincies, are now covered by the "Codex Juris Canici", which was promulgated in 1917, and which went into effect in 1918; that Exhibit 2, which is a translation of various canons of the "Derecho Canico", was made by him, and that said Exhibit 2 is a correct translation of the original from Latin into Spanish with the exception of the words in parentheses which are explanations, and the words written in red letters which should be written in ordinary letters.

The defendant also offered in evidence the deposition of Michael J. O'Doherty, Roman Catholic Archbishop of Manila, taken in the Archbishop's Palace in the city of Manila, on February 18, 1926. In said deposition His Grace testified that he knows that the chaplaincy founded by Doña Petronila de Guzman exists here; that after paying for the stipends of the masses from the income of the property of said chaplaincy the balance has been spent in subsidizing a great number of catholic schools of this archidiocese; that he found here the custom of using those funds for religious purposes, education, beneficence, charity, etc., and that he only followed the custom of his predecessor, Mons. Harty; that this custom has been followed in the particular case of the chaplaincy in question; that he remembers that the parents of plaintiff applied in

the name of the latter for his appointment to this chaplaincy; that as it was contrary to the laws of the church to appoint a young man without his having studied sufficiently to be a priest, that he remembers having made an offer to educate the plaintiff, not because he then had the right to the chaplaincy, but for equity, taking into account the benefits that his family had given to the church; that the Holy See has approved the custom of spending the income of the vacant chaplaincy for other pious ends. This witness further testified as follows:

> "Q. Does Your Grace mean to say that there does not remain any balance from the incomes of said chaplaincy at present, or is there any remainder after making those investments?
>
> A. At present there is but the credit of the last year of which we have not disposed as yet, that of the year 1925, because it was presented the last month, and we have not had an opportunity to dispose thereof, because the parochial schools will be opened in the month of June."
>
> (Deposition, p. 5).

On cross-examination His Grace testified that the corporation sole, The Roman Catholic Archbishop of Manila, claims to be the absolute owner of the property known as Nos. 210, 212 and 214, Calle Rosario; that he was appointed Archbishop of Manila on September 6, 1916, and assumed his office on December 14, 1916. He further testified:

> "Q. Of your own knowledge, can Your Grace tell us what amount was paid each year for masses?

"A. I know that the number of masses in this chaplaincy is sixty, and five pesos were paid for each, which means three hundred pesos for masses of this year; now it may be that some years we have delivered the same to some priest of the diocese for the sum of two pesos per month, but to ascertain it I would have to see the books; however, I can say that the biggest expense that was paid for is that of five pesos for masses, that is, three hundred pesos a year."

(Deposition, p. 8.)

* * * * *

"Q. Has Your Grace received any application from any other person for this chaplaincy?

"A. None that I know of, it is the only one."

(Deposition, p. 14)

* * * * *

The Archbishop further testified that he was familiar with the letters Exhibits B, C, and D of the complaint, addressed to His Grace by different priests recommending the appointment of plaintiff as chaplain; that all those priests deserved His Grace's confidence, but that in the present case he had to reprimand them "por haberse metido en camisa de once varas"; [for not having minded their own business] that he also remembered having recieved the original of the letter Exhibit B of the Stipulation of Facts.

On re-direct-examination this witness testified:

"Q. Your Grace has testified that some of those masses of this chaplaincy were said by priests to the intention of Your Grace; what does Your Grace mean by that?

"A. For instance, if a father of a family comes to me and asks me to say a mass for the recove-

ry of the health of a child of his who is sick; as I cannot say all the masses charged to me, I call a priest and give him the same amount and tell him "Father please say the mass to my intention"; naturally my intention is that of the father of a family who has paid me the amount.

"Q. And in this particular case, when Your Grace says that some masses be said by priests to the intention of Your Grace, what do you mean by that?

MR. GIBBS:—Objection, as being immaterial.

"A. My intention was to comply with the purposes of the chaplaincy.

"Q. When Your Grace orders some priest to say masses to your intention for some purpose and those priests reported to Your Grace that they have complied with your intention according to usage, customs and laws of the church with that information?

"MR. GIBBS: Objection, as being incompetent and impertinent.

"A. That is absolutely the ordinary way of the Church of obtaining the saying of masses."

(Deposition, pp. 21 and 22.)

The Archbishop also identified the signature of Cardinal C. de Lai to Exhibit L of the deposition; that said Cardinal was the secretary of the "Congregación Consistorial"; that said "Congregación Consistorial" is the body that governs all the bishops and all the affairs referring to their diocesis in the name of the Holy Father.

On re-cross-examination he testified:

"Q. Does your Grace know the names of the persons in whose behalf must be said the masses according to the will of the deceased Petronila de Guzman?

A. As I have many chaplaincies, I cannot remember the conditions (terms) of each chaplaincy, but I know it because I have read it once, I don't remember it now.

Q. Is it necessary that the priest who says the mass should have knowledge of the names of the persons in whose favor the mass is said?

A. It is not necessary.

Q. Therefore, the priests to whom Your Grace has entrusted your intention with reference to the masses, in order to comply with the will, had no knowledge of the persons in whose favor they ought to say the masses?

A. Ordinarily that is not material.

Q. So far as Your Grace knows did any of those priests know the names of the persons for whom the masses ought to be said?

A. I believe not, I don't think it necessary.

Q. Therefore, they are general masses [illegible] in favor of all the Catholics?

A. No; we have a record of the masses and it is there put down 'sixty masses for the intentions of chaplaincy No. 69,' it appears there, and then when the day comes those masses are said."

"Q. Is it compulsory on the part of Your Grace to pay those priests who say those masses?

"A. It would be my obligation, if these priests would give us their fees in favor of the seminary; if a priest, in order to help the native clergy, says: I say so many masses, but I do not want to collect the fees; then the fees are given to the seminary.

"Q. Then in practice, as a matter of fact, no payment or delivery of those fees is made, but they are kept for the seminary.

"A. We would have then to study the disposition of each year; but I believe that generally it was what was done.

"Q. That is to say, that the priests have not ac-

cepted anything in payment of their services for saying the masses?

"MR. FERIA: Objection, as being immaterial.

"A. Some years yes, some years not; we would have to see the books of account of each year.

"Q. Your Grace cannot tell without examining the books, if in reality any fee was paid to any priest for saying the mass in connection with this chaplaincy, can Your Grace tell it?

"A. At this time I cannot tell.

(Deposition pages 25-26.)

* * * * *

"Q. Your Grace acknowledges that the rents of the properties Nos. 210, 212 and 214 Calle Rosario belong to the chaplaincy in question?

SR. FERIA: I object to the question because the witness has already declared that he has not seen the properties.

A. I have not seen the properties and I have to rely upon the books as to the property belonging to the chaplaincy.

Q. Without reference to your having seen the properties or not, your Grace acknowledges that these properties beloong to the chaplaincy in question?

A. Yes, sir; there is no question about that."

(Deposition of His Grace Michael J. O'Doherty p. 29)

The documentary evidence offered by defendant consists of Exhibit 1, a copy of two pages of book A of 1919, 1920 and 1921, entitled "Obras Pias de la Sagrada Mitra y fundaciones," which was admitted as part of the cross-examination of witness Daniel Boquer; Exhibits A to I of the plaintiff, which were admitted as part of the testimony of witness Barahona; Exhibit J which was admit-

ted as part of the testimony of witness Boquer and Barahona; Exhibit 2 is a translation from Latin to Spanish of the canons copied in the Stipulation of Facts; Exhibit 3 was rejected by the court, Exhibits 4 and 5 are the translation and original, respectively, of a communication from "La Sagrada Congregación Consistorial" to the Archbishop of Manila.

Findings of Fact:

From the stipulation of facts and the proofs above set forth, the court finds that the following facts have been established:

(1)—That the real property known as Nos. 210, 212 and 214 Calle Rosario, Manila, particularly described in Transfer Certificate of Title No. 17603 (Exhibit F of the complaint) formerly belonged to Petronila de Guzman, who executed her last will and testament on the 13th day of March, 1816, and who died some time between that date and April 24, 1820 (the exact date not appearing in the record). Said property originally consisted of the present lot of 238.90 square meters, with a house of strong materials which the testatrix herself appraised at ₱1,600.00,

(2)—In her last will and testament Petronila de Guzman charged her executors to constitute her said house valued at ₱1,600.00, not including the value of the lot, into a collative chaplaincy (Capellania Colativa) immediately after her death "electing for chaplain Don Esteban de Guzman, legiti-

mate son of my grandson, Don Telesforo de Guzman, and in his default the nearest relative and in default of such relatives, he must be a boarding pupil (*colegial*) of the San Juan de Letran College and be an orphan mestizo, native of this town" (Binondo). She also provided in her will that her executor should nominate the "Padre Presidente" of the San Juan de Letran College as patron of such chaplaincy. She appointed her first executor as administrator of such chaplaincy during the minority of said chaplain, and she further provided the said chaplain should say sixty masses every year in the privileged altars of the churches of the city of Manila and outside on behalf of the souls of her father, Don Tomas de Guzman, of her mother, Doña Sebastiana de Jesus, of her brothers and sisters, and of the testatrix herself after her death.

(3)—According to and by virtue of said last will, Telesforo de Guzman, executor of Petronila de Guzman, on or about April 24, 1820, filed a written petition with the Archbishop of Manila asking that the foundation of a collative chaplaincy be sanctioned upon the house of strong materials above mentioned which he said produced an annual rental of ₱180.00, and that the title of chaplain be issued to his minor son Esteban de Guzman. (See Exhibit A of Stipulation of Facts, pp. 5, 6 and 7.) Acting upon that petition, the Archbishop of Manila, on May 12, 1820, ordered as follows:

> "Having seen the petition of Mr. Jose Telesforo de Guzman, resident of the town of Binondo and

testamentary executor of Mrs. Petronila de Guzman in the testimonial of foundation of the collative chaplaincy of masses which said testatrix orders, in the ninth clause of her last will found in this proceeding, to be founded upon a house of stone and mortar belonging to her situated on Calle Real of said town of Binondo, the value of which amounted to the sum of P1,700 (one thousand seven hundred) together with the comment of the fiscal, said—That in conformity with the representations of the promotor Fiscal, he was disposed to approve and did appove the foundation of the chaplaincy with all the circumstances and conditions provided for in said clause (of the will) and in the deed of foundation, as well as the imposition (charge) of seventeen hundred pesos against said building, converting said sum into spiritual property of a perpetual character subject to the ecclesiastical form and jurisdiction for all of which and what is annexed thereto and is connected therewith, he made use of his authority and issued this judicial decree ordering that a note of said foundation be made in the church register of the Noble City and in that of the Ecclesiastical Court and after this proceeding said executor will present himself to the parish priest in order that the proper appointment may be issued to the chaplain. And by this order he provided as stated and said Right Reverend ordered and signed, which fact I hereby certify—The Archbishop—Before me Dr. Raymundo Rojas, Secretary.)

(4) Since the foundation of the said chaplaincy in the year 1820, as above set forth, five chaplains have been appointed thereto. The first chaplain was Esteban de Guzman, who was chosen by the foundress herself, and who was formally appointed on June 16, 1820, when he was less than fourteen years of age. (See Stipulation of Facts,

Par. 4.) The second chaplain was Vicente de Guzman, son of Telesforo de Guzman, and brother of the first chaplain, Esteban de Guzman. The third chaplain was Mariano de Guzman, son of Juan Bautista de Guzman, grandson of Telesforo de Guzman and a nephew of the first chaplain Esteban de Guzman. The fourth chaplain was Fernando Maniquis, son of Regina de Guzman and grandson of Tomasa de Guzman, who was a sister of the first chaplain, Esteban de Guzman; and the fifth chaplain was Angel Gonzalez, son of Escolastica de Guzman and grandson of said Tomasa de Guzman, sister of the first chaplain, Esteban de Guzman. None of these five chaplains was a "clerigo" at the time of his appointment to the said chaplaincy. (See Stipulation of Facts, Pars. 5, 6, 7, 8 and 10).

(5) The fourth chaplain, Fernando Maniquis, resigned on November 17, 1897, and his sucessor, Angel Gonzalez, was appointed on June 20, 1901, and resigned as such effective December 6, 1910. Since the resignation of the fifth chaplain, Angel Gonzalez, the said chaplaincy has remained vacant. (See Stipulation of Facts, pars,. 7 and 8.).

(6) Angel Gonzalez, the fifth chaplain or beneficiary above mentioned, received the income from the property of said chaplaincy from the date of the resignation of his predecessor, November 17, 1897, to December 31, 1910. (See Stipulation of Facts, Par. 11 and the the decision of the Supreme Court in the case of Angel Gonzalez vs. Harty, etc.,

32 Phil., 328).

(7)—Plaintiff Raul Rogerio Gonzalez was born September 16, 1912, is the legitimate and eldest son of the last chaplain, Angel Gonzalez, and his wife Adelaida Gonzalez. (See Stipulation of Facts, Par. 13, and testimony of Fernando Maniquis, Sten. Notes, p. 3.) Aside from the formal recommendation of the Rector of the San Juan de Letran College, as patron of the chaplaincy in question (Exhibit B, Stipulation of Facts), the plaintiff was recommended to defendant by four Roman Catholic priests, namely, Juan Mendoza, Benito Cebrero, Victor Enrile and Marcos Ponsal, who seemed to have known him personaly and who certified to his good conduct and apparent inclination and aptitude for the priesthood, (Exhibits B, C, D, and E of the complaint, the authenticity of which was admitted by Archbishop O'Doherty in his depositions).

(8) So far as the records show, plaintiff is the nearest relative of the first chaplain, Esteban de Guzman. The fourth chaplain, Fernando Maniquis, has a son who is of about the same age and in the same degree of relationship from the first chaplain as the plaintiff, but he is not a candidate for appointment to this chaplaincy, and his father expressly renounced such candidacy in open court while he was testifying as a witness for plaintiff in this case. According to the Archbishop of Manila himself, plaintiff is the only applicant for ap-

pointment to the chaplaincy in question (Deposition, p. 14).

(9)—The said property known as Nos. 210, 212 and 214 Calle Rosario, Manila, and particularly described in Transfer Certificate of Title No. 17603, belongs to the chaplaincy in question (Deposition, p. 29).

The case involves the following issues:

1. Has the court jurisdiction of this cause?

2. Is the plaintiff qualified and entitled to be appointed to the chaplaincy in question?

3. What are the respective rights and obligations of the chaplain and the defendant with regard to this chaplaincy and the property in question?

In relation to the first question, defendant contends that the civil courts have no jurisdiction to take cognizance of this cause, and in fact argues:

> "According to paragraph No. 2 of the agreed statement of facts, the collative chaplaincy in question was founded or established upon the terms and conditions stipulated in the document Exhibit A attached thereto and made a part thereof.
>
> "According to said Exhibit A of the agreed statement of facts, the capital of the chaplaincy in question that is, 'the aforesaid property is withdrawn from the body of temporal properties and transferred to the spiritual properties of this Archbishoppric', being changed 'into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction.'
>
> "It having been stipulated by the parties to the foundation of this chaplaincy that the property appurtenant thereto is withdrawn from the body of temporal properties and transferred to the spiritual

properties of the Archbishopric of Manila, and is subject to the ecclesiastical forum and jurisdiction, it is clear that the civil courts have no jurisdiction to intervene in this case, because the contract is the supreme law between the parties. It is true that according to our present legistlation an agreement is void as between the parties which deprives the court of their jurisdiction and for this reason the provision of the Civil Code relative to trial before friendly arbitrators was repealed; but it is none the less true that said agreement not being illegal at the time of the making thereof, it cannot be annuled by any subsequent legislation because our Organic Law prohibits the impairment of the obligation of contracts." (Def's. Memorandum pp. 2-3.)

Granting, without deciding, that under the laws existing at the time of the establishment of the said chaplaincy, the interested parties could legally stipulate to place the property of the chaplaincy beyond the jurisdiction of the civil courts, as counsel for the defendant contends, the court fails to find any stipulation to that effect. Petronila de Guzman, in her last will, merely charged her executors to constitute her said house into a collative chaplaincy immediately after her death; and the Archbishop of Manila, in approving the foundation, merely said: "Que conformandose en un todo con lo expuesto por dicho Promotor Fiscal venia en aprobar y aprobó la fundación de dicha capellania, con todas las circumstancias y condiciones que pide la citada clausula y Escritura de su fundación como tambien la imposición de los (1,700 pesos) mil setecientos pesos sobre dicha casa, erigiendo dicha cantidad en bienes espirituales y por titulo perpetuo

haciendola como lo hace del fuero y jurisdicción Eclesiastico, etc." (Exhibit A, Stipulation of Facts, p. 8).

The fact that the Archbishop of Manila imposed a charge of ₱1,700.00 upon said house converting said sum into spiritual property, cannot, in the opinion of the court, be interpreted in any way to mean that the parties intended to place the property in question, consisting of a house and lot, beyond the jurisdiction of the civil courts.

The fact that in the case of Gonzalez vs. Harty, et al. the Roman Catholic Archbishop of Manila did not attempt to question the jurisdiction of the civil courts over the property of the chaplaincy in question, and the fact that in the year 1914 the same legal entity invoked the jurisdiction of the civil courts in obtaining a Torrens title to said property show that there was no such contract or stipulation between the parties to place said property beyond the jurisdiction of the civil courts. Whatever may be the effect of the spiritualization of the sum of ₱1,700.00 of the value of the property in question, it cannot deprive the civil courts of jurisdiction to adjudicate the civil rights of an individual, such as those involved in the present case.

The court quotes the following authorities from plaintiff's brief in this question:

> "In the case of State ex rel. McNeill vs. Bibb St. Church 84 Ala., 23, 4 So., 40, cited on page 4 of defendant's memorandum, the Supreme Court of Alabama expressly held as follows:

"The power of the civil courts to restore by mandamus a party who has been wrongfully removed from an eclesiastical or spiritual office is well established, when the temporal rights, stipends, or emoluments are connected with or annexed to such office which belongs to the incumbent. In Rex v. Blooer, 2 Burrows, 1043 the leading case, the exercise of the power was based on the ground that there was a temporal right. It is said: 'A mandamus to restore is the true specific remedy, where a person is wrongfully dispossessed of any office or function which draws after it temporal rights, in all cases where the established courts of law has not provided a specific remedy by another form of proceedings, which is the case with regard to rectories and vicarages."

"In the case of Jennings vs. Scarborough, 56 N. J. L., 401, 28 Atl., 558, (another case cited by defendant on page 4 of its memorandum) the Supreme Court of New Jersey held as follows:

'1. Courts of law will not interpose to control the proceedings of ecclesiastical bodies in spiritual matters which do not affect the civil right of individuals; but when the civil rights of an individual are involved, jurisdiction is committed to the courts of law to protect those rights which the court cannot discard.

2. The call of a rector by the vestry, and the acceptance of such call creates a contract for the payment of the stipulated salary so long as the pastoral relation continues. This contract is a civil right which the courts will protect and enforce.

3. By a canon of the Protestant Episcopal Church a rector, cannonically elected and in charge cannot resign his parish without the consent of the parish or its vestry, nor can such rector be removed therefrom by the parish or its vestry against

his will, except upon the dissolution of his pastoral connection, in the manner and by the authority designated in other canons.

4. In the diocese of New Jersey, when there are differences between a minister and his congregation which cannot be brought to an amicable conclusion, the procedure for dissolving the pastoral relation is prescribed by canon 4, tit. 3. Sections 3, 4. Section 3 provides that when the matter cannot be amicably settled within a reasonable time the bishop shall convene the standing committee, and shall give notice to the parties to appear before them and present their proofs and x x x x x x arguments at such time and place as he shall appoint. Section 4 provides that when the hearing shall be concluded the bishop shall make such order in regard to the matter as he may think just and for the true interest of the church, and such order may require the rector to resign his rectorship, and may require the church to pay a sum of money to the rector; and it is made the duty of the rector and of the church and every member thereof to submit to and abide by such order, etc., with a proviso that no order shall be made unless with the advice and concurrence of at least a majority of the standing committee who shall have been present at the hearing. Held: (1) That by sections 3 and 4 of the canon a special tribunal was created, consisting of the bishop and the standing committee, for the hearing of proofs and arguments presented before that tribunal; (2) that the prosecutor was entitled, as of right, to present his proofs before the bishop and the standing committee, and to a hearing before that body on the proofs presented by both parties, especially as the determination of that tribunal might deprive him of property rights which inured to him in virtue of his rectorship; (3) that the order under review, having been made without hearing proofs, and not being in compliance with the procedure

prescribed by the canon, was irregular; (4) that the order, being one affecting the civil rights of the prosecutor, in that, if valid under the law of the church, it terminated his contractual relation with the parish, is therefore reviewable on certiorari.

(Syllabus by the Court.)

"In the case of Prickett, et al vs. Wells, et al. 117 Mo., 502, 24 SW. 52, the Supreme Court of Missouri held as follows:

'BARCLAY, J. This suit deals with a controversy between two groups of members of the Christian Church at Neeper, in Clark county. It grows out of a difference in the congregation regarding the selection of a pastor, but it finally assumed the form of a litigation over the right to the possession and use of the church building and other property. The church appears to be an unincorporated association of worshipers of the denomination "Disciples of Christ," and the real estate devoted to its purposes (including an acre and one-half of ground and the house of worship) was in 1880 vested in three persons, as trustees for the use of the church, by a deed duly executed. Two of the trustees named in the deed are plaintiffs in this suit, which was brought to restrain defendants from interfering with the management of the property. The third plaintiff is one of the elders of the church. It appears from the evidence at the trial that the government of the local society, according to the doctrine and usage of the Christian Church, is vested in the elders and deacons, the former administering spiritual affairs, such as teaching and employing preachers, while the deacons manage the finances, and attend generally to the material needs of the church; that the elders and deacons are selected and ordained by other elders of the church, and cannot otherwise be appointed. The gist of the present dispute is that

one of the defendants, Mr. Wells, persisted in using the church property as its pastor, against the protest and objection of the duly chosen elders of the church. He claimed the right to do so, not because of any contractual relation with them, but on the ground that he had been engaged as preacher by certain other members, purporting to act as elders, but who had not been designated or chosen as such by elders already in service, according to the usages and course of discipline in that church. The foregoing facts appearing in the trial court, which after a full hearing, entered a decree for plaintiffs to the general purport prayed by them, from which defendants appealed.

'Considerable evidence was heard touching the practice and usages of the church and the origin of this litigation, the details of which need not be set forth at length. While it is true that the civil courts may not properly interfere with that part of church management which concerns the spiritual welfare and discipline of the members, yet, when rights of property are involved in controversies of this class, those courts cannot justly evade the exercise of such jurisdiction as is necessary to the determination and vindication of such rights. In the case in hand the title to the church property is vested in trustees, of whom plaintiffs compose a majority; and the question of their authority to control that property finally turned on the question of the right of certain defendants to act as elders and deacons of the church at Neeper. That question depends on the doctrine and practice of the Christian Church at that place, as shown by the evidence. There was no substantial conflict in it in respect of the right of the two plaintiffs who were duly appointed elders to decide whether the pastor in question should be retained or dismissed. The trial court found as a fact that those plaintiffs had the right to determine that question under the usages and principles governing the Christian

Church at Neeper. We fully coincide in that finding. The people of that society, in the exercise of their religious liberty, had the undoubted right to adopt rules for their own church government, if not inconsistent with the constitution and laws of the land. In adjusting their respective claims to the use of the church property, as between themselves, the civil courts will give effect to those rules, subject to the qualification just adverted to. In doing so in the present suit, the trial court found for plaintiffs on the facts, and in our opinion, correctly. The judgment is affirmed.' (24 SW., 53).

"In the case of Runkel vs. Winemiller, et al., 1 Am. Dec. 411, the court held:

'WRIT OF MANDAMUS TO REINSTATE A MINISTER.—Every endowed minister of any sect or denomination of christians who had been wrongfully dispossessed of his office, is entitled to the writ of mandamus, to restore him to his function and temporal rights with which it has been endowed.

'PROCEEDINGS TO OBTAIN.—To obtain the writ, it is only necessary to show by prima facie evidence the right or title of the persons claiming it.'

"The Chief Justice of the Supreme Court of Minnesota, speaking for that Court in the case of Trustees of East Norway Lake Norwegian Evangelical Lutheran Church vs. Halvorson, 42 Minn. 503, 44 NW. 663, among other things, said:

'Civil courts take up matters of religious doctrine with extreme reluctance. They never do so—it is beyond their province to do so—for the purpose of determining the abstract truth or falsity of any religious doctrine; and they never consider them at all except where civil rights, rights of property, or contract respecting the holding,

control, use or enjoyment of property, are dependent on them x x x."

Defendant contends that, although granting that the civil courts have jurisdiction to take cognizance of this case, and that plaintiff has the right to be appointed chaplain, yet this court has no jurisdiction to grant the writ of mandamus prayed for because, under Article 1465 of the Canon Law, plaintiff might have appealed to the Pope, but did not avail himself of that remedy. Considering the attitude of the Holy See in this matter, as manifested in the letter, Exhibits 4 and 5 of the evidence, wherein his Holiness exonerated defendant Archbishop of Manila in his failure to fulfill faithfully the will of the foundress of this chaplaincy with regard to the saying of the masses and assumed to authorize him to spend the income of this chaplaincy according to his conscience and will, and considering, further, that it would be unjust to require plaintiff to undergo the trouble and expense of appealing to the Pope at Rome in view of the said letter, Exhibits 4 and 5, such an appeal by plaintiff, would have been a useless proceeding. The law does not require a vain and useless act to be performed. Furthermore, under section 222 of the Code of Civil Procedure, plaintiff is entitled to the writ of mandamus prayed for "if there is no other plain, speedy, and adequate remedy in the ordinary courts (course?) of law". The court is of the opinion that plaintiff has the right to seek redress from the defendant through the courts of justice

without the necessity of appealing to the Pope from the decision of defendant.

With regard to the second question, counsel for defendant contends:

(1)—That the foundress, Petronila de Guzman, in her last will, only provided for the election of the first chaplain and did not mean that the succeeding chaplains should be the nearest relative of the first chaplain, or, in default of such relatives, a "colegial" of the San Juan de Letran College;

(2)—That it has not been proven during the trial that plaintiff is the nearest relative of the first chaplain; and

(3)—That plaintiff is not qualified to be appointed chaplain because he is not a priest (clerigo), which is a requisite prescribed by the new Canon Law, promulgated in the year 1918.

As to defendant's first contention, the chaplaincy in question has existed for more than one hundred years. The provision in the will "elegiendo por capellan a Don Esteban de Guzman, hijo legitimo de mi nieto Don Jose Telesforo de Guzman, y falta de este el pariente mas cercano y por defecto de este deberá ser un colegial de San Juan de Letran y sea mestizo huerfano, natural de este dicho pueblo", means in the opinion of the court, that the chaplaincy in question must be occupied by the nearest relative in succession to the first chaplain, Esteban de Guzman, as long as such relative quali-

fied to fill the position may be found, and upon the failure or extinction of such a relative, or line of succession, then the appointment of chaplain will fall upon a "colegial" of San Juan de Letran College who must be an orphan mestizo of the town of the foundress. This is the same interpretation that for more than a century has been given by the defendant corporation sole to the will in question. Thus according to the Stipulation of Facts (pars. 4 to 8, inclusive), defendant has always appointed as chaplain of this chaplaincy the nearest relative of the first chaplain. The second chaplain was a brother of the first chaplain; the third was a nephew of the first; the fourth was a grandson of the sister of the first; and the fifth was also a grandson of the sister of the first.

As to defendant's second contention, that is, that the fact that plaintiff is the son of the last chaplain, Angel Gonzalez, does not necessarily mean that he is the nearest relative of the first chaplain because after the appointment of Angel Gonzalez there might have been born other relatives nearer in degree to the first chaplain than the plaintiff or his father, the proofs show that plaintiff is the only candidate for the appointment to this chaplaincy who is next of kin of the first chaplain; that the only other next of kin of the first Chaplain is a son of the fourth chaplain, Fernando Maniquis, of about the same age as plaintiff, but that he is not a candidate. The Roman Catholic

Archbishop of Manila, in his deposition testified that plaintiff is the only claimant to this chaplaincy.

The court is of the opinion that, in the absence of evidence that there is another claimant with better rights than plaintiff, the plaintiff's claim may not justly be rejected upon the ground that he may not be the nearest relative of the first chaplain.

As to defendant's third contention, the last will of the founder or foundress of a chaplaincy is the supreme law to be observed (see decision of the Supreme Court of Spain of March 17, 1909, Vol. 114, Jur. Civ. 197; decision of the Supreme Court of Spain of January 9, 1906, Vol. 103, Jur. Civ. 60; Perejo Diccionario de Ciencia Eclesiastica, Vol. 2, p. 540; and Escriche Diccionario de la Legislacion y Jurisprudencia Nueva Edicion, p. 404).

The intention of the foundress of this chaplaincy to have it occupied and its benefits enjoyed even by one who is not a priest is shown not only by the fact that she herself chose the first chaplain Esteban de Guzman, who was less than ten years of age on the date of the execution of her said will and less than fourteen years of age on the date of his appointment as chaplain, but also by the fact that she expressly provided that in case of default of the nearest relative of the first chaplain, a collegian of the San Juan de Letran College should be appointed as chaplain. A student of San

Juan de Letran College certainly could not be a priest or clerigo, and, as a matter of fact, in accordance with the provisions of the will of Petronila de Guzman none of the five chaplains heretofore appointed to the chaplaincy was a priest at the time of his appointment.

The canon which the defendant now invokes in support of the refusal to appoint plaintiff as chaplain was only promulgated in the year 1918. The will was executed in 1816 and the order of the Archbishop of Manila, approving the foundation of the chaplaincy in accordance with said will, was entered in the year 1820.

The court is of the opinion that the new canon law of 1918 cannot in this case be given a retroactive effect, for to do so would impair the obligation of the trust involved in the acceptance of the provision of said will for the establishment of the chaplaincy, and it would impair the obligation of a contract in violation of the Organic Act, the Jones Law. In fact, the court notes that defendant itself has made no attempt to apply said canon law to the chaplaincy in question. For instance, Canon 1457 requires the appointing power (which is the defendant) to advise the patron of the fact that the chaplaincy is vacant, but it does not appear that the defendant has ever formally notified the patron of the said chaplaincy that the chaplaincy is vacant, even though it has remained vacant for about sixteen years.

It appears that in the year 1914, defendant corporation sole caused the property of the chaplaincy to be registered under the Land Registration Act in its own name, free of any trust character, in spite of the fact that the present Archbishop of Manila, in his deposition, admitted that said property belongs to this chaplaincy. It also appears from the said deposition, as well as from the testimony of the accountant Cayetano Barahona that all the income of the property of this chaplaincy, since the date of the resignation of the last chaplain, Angel Gonzalez, up to the past year, has been devoted to church purposes entirely different from the expressed purposes of the foundress, with the exception of the stipends to priest for saying masses.

Plaintiff is now fourteen years of age and was in the sixth grade at the time he testified in his own behalf in this case on February 12, 1926. He is the eldest son of the last chaplain, Angel Gonzales, and as far as the record shows, is the nearest relative of the first chaplain, Esteban de Guzman, and is a candidate for this chaplaincy. According to the testimonials of four Roman Catholic priests he is of good conduct and has manifested inclination and aptitude for the priesthood. He testified in this case that he desired to become a priest and even aspired to become an Archbishop.

The court finds that plaintiff is qualified and is entitled to be appointed chaplain of this chap-

laincy in accordance with the will of foundress.

In relation to the third question, plaintiff contends that:

> "That said chaplaincy, founded, approved, and accepted as aforesaid, entailed and still entails the obligation on the part of the chaplain occupying the same, after being ordained as a priest, to celebrate sixty masses anually in the churches of Manila for the soul of the testratrix, Doña Petronila de Guzman, and those of her decesed father, mother, brothers and sisters, and also entailed and still entails the obligation on the part of the defendant to appoint and maintain with the income of said property an occupant of said chaplaincy and to maintain and educate the heir apparent to said chaplaincy pending his appointment, not only for the purpose of fulfilling said obligation to celebrate masses for the souls of the dead, but also to properly equip and prepare the heir apparent for the performance of his duties."

> "That the only right, title or interest of the defendant in or to said property, is as administrator for the incumbent of said chaplaincy when occupied or for the heir apparent thereto when vacant, and which administration defendant arrogated to itself in the year 1863 without any authority therefore in the will of the foundress" (Par. 8, Amended Complaint.)

Defendant contents that:

> "That, under the elementary principles of the ecclesiastical or Canon Law, the chaplain is entitled only the benefits of a chaplaincy pertaining to the time in which he occupies the position, and the diocesan prelate (and in this case the defendant) has the power to authorize the use, for other similar pious purposes, of the eclesiastical

receipts or incomes of the chaplaincies, like the one in question, during the time that the offices of chaplain therein are vacant and the defendant in this case, following the custom established in this archdiocese concerning the use of the receipts of vacant chaplains, has disposed of the incomes of said chaplaincy during all the time in which the office of chaplain therein was vacant, using the same for pious purposes similar to those for which the testatrix has founded the chaplaincy."

As will be noted, the defendant does not question the right of the chaplain to the benefice of the chaplaincy—that is to say—to receive the rents of the property in question during his incumbency in office as chaplain. The question, then with regard to the income of the property in litigation, refers to the disposition of the income or rents from said property produced during the vacancy of said chaplaincy. Plaintiff contends that such income, after deducting the stipends paid to priests for saying the masses required by the will, belongs to the heir-apparent or next occupant of the chaplaincy, but the defendants contends that it has the right to dispose of such rents for pious ends, analogous to those for which the testatrix founded the chaplaincy.

It is necessary to determine the purpose for which Petronila de Guzman founded the chaplaincy in question. A perusal of the ninth clause of her will in connection with the interpretation given thereto by the ecclesiastical authorities from the

date of the foundation of this chaplaincy, in 1820, to the date of the resignation of the last chaplain in December, 1910, leaves no room for doubt that the testatrix, in founding a chaplaincy upon the said property, intended perpetually to maintain a chaplain who, upon being ordained as a priest, in return for such benefit provided by the testatrix in her will, is requested to say sixty masses each year for the benefit of the souls of the testatrix and those of her deceased father, mother, brothers and sisters; the fact that the first chaplain appointed by the testatrix herself was less than fourteen years of age at the time that he assumed the office as chaplain, and that the testatrix provided that in case of lack of a relative of the first chaplain, a student of the San Juan de Letran College be appointed chaplain, clearly show that she did not intend to appoint as chaplain one who is already a full-pledged priest, but rather a boy who would embrace the sacerdotal career so that as soon as he may be ordained as a priest he may fulfil the spiritual charge imposed by the foundress of this chaplaincy. The ecclesiastical authorities have broadened that provision of the will by interpreting it to mean that while the chaplain is still unable to say the masses himself, he should order them said, paying therefor out of the income of the property in question.

The terms of the appointment of the last chaplain, Angel Gonzales, issued on August 21, 1901

by order of the Archbishop of Manila, illustrates the foregoing interpretation of the will of the foundress. Said appointment reads as follows:

"WHEREAS, the Chaplaincy founded by Da. Petronila de Guzman, the capital of which consists of a building of brick and mortar erected on its own lot located on the Calle de Rosario, District of Binondo, is now vacant because of the renunciation by its last possessor D. Fernando Maniquis y Guzman; now, therefore, the necessary requisites and qualifications according to law being found concurring in the Tonsurista, D. Angel Gonzalez y Guzman, a boarding student in the College of San Juan de Letran of this City, we order to issue and do issue this present title by virtue of which we elect and appoint the above-named D. Angel Gonzalez y Guzman, as chaplain of the benefice above referred to, and by the manner and form which we best can do, we hereby give him collation, canonical institution and real possession vel quasi of the above-mentioned chaplaincy,which shall be administered as heretofore by the administrator of the funds of this Holy Archbishopric, *so that, as such chaplain he may possess and enjoy it as Ecclesiastical benefice and by perpetual title with the obligation of ordering to be said, by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the foundress, and with the understanding that every year he has to show to our Court of Chaplaincies* wherein this shall be recorded, *that he has discharged said masses, without which requisite the rent which for the purpose may be necessary shall be withheld from him.* And by virtue of Holy Obedience we order those to whom these presents may concern to have and treat the said D. Angel Gonzalez y Guzman as the beneficiary and possessor of said chaplaincy, *and that they pay him well and faithfully the income which in the future the capital may*

produce and that which it has produced while vacant, placing upon his conscience the duty of complying with the annexed conditions and relieving us thereof. Given in our Archbishop's Palace, at Manila, signed by our hand and sealed with our seal and certified to by our undersigned Secretary of Chamber and Government this twenty first day of August, one thousand nine hundred and one.

"With seal.

"(Sgd.) FR. MARTIN
"By order of His Illustrous Grace."
(Exhibit K, evidence)

It will be seen that the testatrix bequeathed the property in question for a specific purpose, that is to say, for the perpetual maintenance of a chaplaincy, and the saying of sixty masses each year for the benefit of her soul and the souls of her parents, brothers and sisters. She did not bequeath it to the church to the end that the latter might employ its income for general religious and charitable purposes.

The Archbishop of Manila testified that he had disposed of all of the income of the property in question from December 31, 1910, to the end of the year 1924, for religious purposes, education, beneficence, charity etc, following the custum which he found had been followed by his predecessor, Mons. Harty (Deposition, p. 3.). The record, However, fails to show any such custom with regard to the use of the funds of the chaplaincy in question. On the other hand, it appears from the decision in the

case of Ganzalez vs. Harty, et al (32 Phil., 328), that all the net income of the property in question, during the time the chaplaincy was vacant, as well as during the time that it was occupied by the last chaplain was paid to the latter. Furthermore, even if there were such a custom as that mentioned by the Archbishop, the court could not sanction the same as it would be violation of the terms of the will of the testatrix.

That His Grace, Michael J. O'Doherty, representing the defendant as corporation sole, was conscious of having failed to comply with the will of the foundress of this chaplaincy, and that he knew that he had no authority to dispose of the income of the property of said chaplaincy after paying for the sixty annual masses, is shown by his own confession to the Pope as set forth in Exhibit 4 of the evidence, which reads as follows:

"HOLY FATHER,

"Miguel O'Doherty, Archbishop of Manila, after kissing the feet of Your Holiness, humbly says the following:

"During a decade, up to the year 1916, the charges of masses founded of the Archiepiscoual Chair were not faithfully paid. After beginning to pay them sometime ago, it is very hard and almost impossible to make an exact computation thereof. Wherefore, he humbly prays that some involuntary faults in the computation thereof be cured.

"Besides, he prays that he be given authority to use in another pious matter the incomes which

may remain after paying the annual charges.

"At the audience of the Holy Father on July 3, 1925.

"Our Holy Father the Pope Pious XI after hearing the statement of the undersigned, Cardinal Secretary to the Sacred Consistorial Congregation, after having made the correction with respect to the past, and maintaining in force the obligation to pay the annual charges of masses ordered in the foundation, benignly conferred upon the supplicant Right Reverend Archbishop the authority to use during fifteen years the residue of the incomes in favor of the seminary and other pious matter according to his conscience and will, any other thing to the contrary, notwithstanding.

"C. Card. De Lai, Bishop of Sabina, Secretary.
"Fr. RAFAEL
Arch. of Tesalon, Assessor."

The defendant relies upon the foregoing authorization from the Pope for its supposed right to employ the rents of the property in question for school purposes, and other pious work "according to his conscience and will." The court is of the opinion that neither the Pope nor any court had authority, under the law, to authorize defendant as administrator of the chaplaincy in question to use the income of the property of said chaplaincy for any purpose other than that intended by the testatrix. The supposed authorization from the Pope to the Archbishop of Manila to use the income of the property in question, "according to his conscience and will" and not according to the will of the testatrix,

is of no legal effect whatever.

With regard to the administration of the property of the chaplaincy by the defendant, plaintiff contends:

(1)—That from the fact that the testatrix in Clause 10 of her Will appointed her executor as administrator of the chaplaincy in question, during the minority of the first chaplain, it is clear that the foundress did not intend that the defendant should be the administrator of said chaplaincy, but that same should be administered by the chaplain themselves or by their guardians during their minority;

(2)—That defendant arrogated to itself the administration of said chaplaincy in the year 1863 without any authority therefor from the will of the foundress; and

(3)—That defendant, as self-constituted administrator of said chaplaincy, having committed a breach of trust by registering the property in question in its own name, free of its trust character, and by unlawfully disposing of its rents, the said defendant should be removed by this court as administrator, and that the guardian of plaintiff should be appointed in its stead.

The defendant, on the other hand, contends:

(1)—That according to the decision of the Supreme Court in the case of Gonzales vs. Harty, et al., above cited the said defendant had the right to

administer the chaplaincy in question;

(2)—That defendant registered the property in its own name because said chaplaincy is not a juridical entity constituted under the laws of the Philippine Islands, but is a mere branch of defendant corporation sole;

(3)—That defendant should not be removed as administrator of said chaplaincy by reason of having registered the property in question in its own name, and of having disposed of its income in the manner above indicated; and

(4)—That the most that could happen, in case it be found that defendant had no authority to dispose of the funds of said chaplaincy in the manner pretended by it, would be to declare illegal such disposition of said funds, and to hold the defendant liable therefor to the chaplain after he is appointed as such.

The question of whether or not the defendant had the right to act as administrator of the property of this chaplaincy appears to have been raised and decided in the affirmative in the said case of Gonzalez vs. Harty et al., 32 Jur. Filipina, 347, 356-357.

The Supreme Court, in its original decision in Spanish, said:

> "Our attention has been invited to the fact that the property affected by the chaplaincy should have been administered by the chaplains and not

by the administrators of the Sagrada Mitra, inasmuch as clause 11 of the foundress' will so provided. To refute this assertion, it suffices to say that the provisions of the said will set forth that the first testamentary executor of the estate of the testatrix should act as the administrator of the property during the minority of the first chaplain appointed in that document, Esteban de Guzman. This provision must be understood to be mandatory, execept as otherwise provided by the canonical laws and as, pursuant therewith, the chief ecclesiastical authority may order for, after the latter had accepted the foundation of the chaplaincy, the administration of its property appertains to the authorities established by the Church, pursuant to the latter's own laws, and this rule has been observed since 1863."

With regard to the registration of the property in question, the court is of the opinion that the said property belonging, as it does to the chaplaincy in question as the Archbishop himself admitted in his deposition, and being in the possession of defendant merely as administrator of the said property, the defendant, The Roman Catholic Archbishop of Manila had no legal or moral right to register said property under the Land Registration Act in its own name as owner in fee simple, free from the trust imposed thereon by the testatrix, Petronila de Guzman.

The court, however, is inclined to agree with the counsel for defendant that the defendant should not be removed as administrator of the chaplaincy in litigation, in view of the peculiar nature of the trust created by the testatrix in founding said chap-

laincy. It is evident that the intervention of defendant is necessary in order to carry out the will of the testatrix . Furthermore, the Supreme Court has expressly held in the case of Gonzalez vs. Harty, et al., above cited, that, after the ecclesiastical authority had accepted the foundation of the chaplaincy, the administration of its property belonged to the authorities established by the Church.

The defendant has attempted to charge ten per cent on the income of the property of this chaplaincy for managing it. Plaintiff contends that defendant, having constituted itself as administrator of the said chaplaincy, and having volunteered its service as collecting agent, is not entitled to charge anything for such service.

The defendant corporation sole accepted the administration of the chaplaincy under the terms of the will, and the will does not prescribe any compensation for services in administering the chaplaincy. The inconsistency of the action of the defendant in getting the property registered in its name as owner in fee simple, free from the trust imposed by the last will of the foundress, and then charging ten per cent of the income of the property for managing it is too apparent for further discussion.

It appears from the record that the house belonging to this chaplaincy was burned in the year 1912, and an item of ₱24,503.34 for "Obras" was charged against this chaplaincy in that year (Ex-

hibit A of the evidence). Evidently said sum was spent in repairing or reconstructing the building. It appears, however, from the uncontradicted testimony of W. A. Burn, manager of the Insurance Department of Smith, Bell & Co., Ltd., corroborated by that of Daniel Boquer and Phil. C. Whitaker, that defendant collected from Smith, Bell & Company, Ltd., the total sum of ₱20,125.00 for insurance on said building so destroyed or damaged by fire in the year 1912, and this sum should be credited in favor of the chaplaincy and charged against defendant.

In conclusion, the court is of the opinion:

(1)—That the property known as Nos. 210, 212 and 214 Calle Rosario, Manila and particularly described in Transfer Certificate of Title No. 17603, belongs exclusively to the said chaplaincy of Petronila de Guzman as its capital under the administration of defendant.

(2)—That the plaintiff, as the nearest relative of the first chaplain, Esteban de Guzman, and as the only qualified candidate for appointment as chaplain of the chaplaincy founded by Doña Petronila de Guzman, is entitled to be appointed by defendant as such chaplain;

(3)—That upon his appointment as chaplain, plaintiff is entitled to the income of said property produced from December 31, 1910, the date of final settlement with the last chaplain, Angel Gonzalez, until he shall vacate said chaplaincy, less the

payment of the stipends for the saying of sixty annual masses, which should not exceed ₱300.00 a year, and the necessary expenses of the administration: and

(4)—That the only legal right or interest of defendant in the said property is as administrator of said chaplaincy.

According to the testimony of Cayetano Barahona, accountant of the defendant, the latter collected as rents of the property in question from January 1, 1911, to December 31, 1925, the total sum of ₱153,600.00 (Sten . Notes. pp. 29 and 30). To this sum must be added the sum of ₱20,125.00 collected by the defendant, from Smith, Bell & Company, Ltd. for the fire insurance on the house belonging to the chaplaincy in question, making a total sum of ₱173,725.00. From this total amount should be deducted the following expenses:

1.—That stipends paid by defendant for the saying of the sixty annual masses required by the will, not exceeding ₱300.00 a year;

2.—The amount paid by the defendant for taxes and insurance on the property of said chaplaincy;

3.—The expenses for buildings and repairs thereon, amounting to ₱24,503.34; and

4.—The amount of ₱56.03 for the expenses of the cadastral survey of the lot in question.

WHEREFORE, let judgment be entered in

favor of plaintiff and against defendant, as follows:

(a)—Ordering the defendant, the Roman Catholic Archbishop of Manila, as a corporation sole, and His Grace, Michel J. O'Dougherty Roman Catholic Apostolic Archbishop of Manila, its sole representative, forthwith to appoint plaintiff, Raul Rogerio Gonzalez, as chaplain of the said chaplaincy founded by Doña Petronila de Guzman;

(b)—Ordering the defendant to pay to the plaintiff, through his guardian ad litem, the sum of One Hundred Seventy-three Thousand, Seven Hundred and twenty-five Pesos (₱173,725.00) as the rents and income of the property of said chaplaincy from January 1, 1911, to December 31, 1925, together with the rents and income accrued since December 31, 1925, less expenses incurred by defendant for the purposes enumerated in the next preceding paragraph (4), subparagraphs 1, 2, 3 and 4, and furthermore, from the date of plaintiff's appointment as chaplain, to pay the said plaintiff, through his guardian or guardian ad litem, the net income of said property from time to time as collected;

(c)—Reserving to plaintiff any legal rights that he may have with reference to the cancellation of the Transfer Certificate of Title No. 17603 in a proper proceeding before the Fourth Branch of this court, which has branch exclusive jurisdiction

of "all cases relative to the registration of real estate in the city of Manila (Act No. 2347, sec. 11);

(d)—Ordering the defendant, pending the final termination of this action, to allow and pay to plaintiff out of the accumulated funds of the chaplaincy of Petronila de Guzman for his maintenance education and legal expenses, a pension of One Thousand Pesos (₱1,000.00) a month, payable within the first five days of January, 1927, and within the first five days of each succeeding month; and

(e)—Ordering defendant to pay the costs of this case.

IT IS SO ORDERED.

Manila, P. I., December 20, 1926.

(Sgd.) GEO. R. HARVEY
Judge.

The defendant was, on December 23, 1926, notified of the foregoing decision, and said defendant, on January 4, 1927, entered his exception to said decision and at the same time moved for the reconsideration thereof and the holding of a new trial upon the ground that the evidence does not justify the decision and the latter is contrary to law, which motion is as follows:

(CAPTION AND TITLE OMITTED)

EXCEPTION AND MOTION FOR NEW TRIAL

Come now the undersigned before this Hon. Court in behalf of the defendant entity in the above entitled case, and except to the decision rendered therein and at the same time pray for a new trial

on the ground that the evidence does not justify the decision and the latter is contrary to law.

I

THE EVIDENCE DOES NOT JUSTIFY THE DECISION

First.—Because according to the agreed statements of facts and the evidence, the chaplaincy in question was constituted as a collative chaplaincy upon the express condition, accepted by the testatrix and her executor, that it became subject to the jurisdiction and laws of the church, and therefore the Court has no jurisdiction to take cognizance of this case.

Second.—Because there is no evidence that the plaintiff is the nearest relative of the testatrix or the first chaplain; and besides, even if he were, there is nothing in the evidence or in the will showing the right of the plaintiff to be appointed chaplain of the chaplaincy in question, even supposing that he has the qualifications required by the canon laws for the purpose.

Third.—Because according to the evidence the plaintiff does not have the qualifications required by the canon laws in order that he may be appointed chaplain of a chaplaincy.

II

IT IS CONTRARY TO LAW

First.—Because the Court has taken cognizance of the case on its merits without jurisdiction to do so, according to the evidence above mentioned.

Second.—Because it requires His Grace, the Archbishop Mons. M. J. O'Douherty, representative of the defendant entity, to infringe or violate the laws of the church by appointing the plaintiff chaplain of the chaplaincy in question.

Third.—Because the application of the canon laws in force since the year 1918 does not infringe the obligation of contract, even supposing that the ecclesiastical laws in force at the time the chaplaincy was founded did not require that one be a clergyman in order that he may be chaplain, for there is nothing in the will providing that the nearest relative of the testatrix must be appointed chaplain by the church authorities, whether he had or not the qualifications required by the church laws for the purpose. On the contrary, the executors accepted the condition imposed by the defendant entity for the approval of the chaplaincy that the same shall become subject to the church laws in general and not precisely to those then in force.

Fourth.—Because the court orders the defendant to pay the plaintiff a certain sum of money which is not alleged nor prayed for in the complaint. In the complaint it is only alleged and prayed that the defendant entity appoint the plaintiff chaplain and render an account of the products of the chaplaincy, which rendition of account must be made after the plaintiff is appointed chaplain. The defendant entity is not bound to render, nor has he rendered, any account during the trial of

this case because the books of the chaplaincy and the testimony of Mr. Barahona were presented as evidence by the plaintiff and not as any rendition of account by the defendant.

Fifth.—Because in the judgment it is ordered that, pending the final termination of this case, the defendant entity pay the plaintiff a monthly pension of P1,000 for his support, education and judicial expenses, payable within the first five days of January, 1927, and the first five days of the following months. Because there is no law authorizing or empowering the court to make such pronouncement, and, besides, it is not the thing prayed for in the complaint (See the last amended complaint of April 5, 1926). So long as the right of the plaintiff to be appointed chaplain, which is the principal point in litigation, is not finally decided and he is not appointed as such, he has no right to receive even one cent from the funds of the chaplaincy in question.

FOR ALL THE FOREGOING, we pray that the decision be reconsidered and the defendant be absolved from the complaint with the costs against the plaintiff.

Manila, P. I., January 4, 1927.

ARANETA & ZARAGOZA
FERIA & LA O
By (Sgd.) F. R. FERIA
Attorneys for the defendant
China Bank Bldg., Manila.

NOTICE:

To Messrs. Gibbs &McDonough
Attorneys for Plaintiff,
Manila.

GREETINGS:

Please take notice that on Saturday, the 8th instant, at 8:30 A. M. or as soon as possible, the undersigned counsel will ask the Honorable Court to hear and decide the foregoing motion.

Manila, P. I. January 4, 1927.

ARANETA & ZARAGOZA
FERIA & LA O
By (Sgd.) F. R. FERIA.

Received copy:

In support of the foregoing motion the attorneys for the defendant filed the following memorandum.

(CAPTION AND TITLE OMITTED)

MEMORANDUM IN SUPPORT OF THE MOTION FOR NEW TRIAL

As to the other points raised in our motion for new trial, we do not believe it necessary to make an extensive argument, and we will confine ourselves to inviting the attention of this Hon. Court to a careful consideration of the argument adduced by us in our memoranda already presented, as well as in the motion itself for new trial.

We only intend now to enlarge upon our arguments in support of our motion for reconsideration or new trial which has reference to the pension

which the Court has ordered the defendant entity to pay the plaintiff *pendente lite* because it has not been discussed by any of the parties in their memoranda and it was not expected that the court would make such a pronouncement, not having the power to do so.

Even supposing that this Hon. Court has jurisdiction to take cognizance of the matter in litigation, yet it did not have power to compel the defendant entity to pay the plaintiff a monthly pension of one thousand pesos for his maintenance, education, and judicial expenses against the funds of the chaplaincy in question, and therefore it has overstepped its jurisdiction in ordering the defendant entity to do so.

There is no law, nor doctrine either here or in the United States of America, authorizing a court to compel one of the parties to pay to the other *pendente lite* a pension for his maintenance, education and court's expenses in an action other than for divorce or annulment of marriage wherein the marriage is admitted. In such cases it is granted because the husband is by law required to support his wife, and the latter shall continue to be his wife so long as said marriage is not dissolved or annuled by final judgment. (Article 58 of the Civil Code)

In the case of Yangco vs. Rhode (1 Phil., 404) the Supreme Court granted the writ of prohibition applied for by the petitioner Yangco against Judge Rhode who had required said petitioner to pay a

pension *pendente lite* to the plaintiff Victorina Oben who had filed a divorce suit against said petitioner, alleging to be married with the latter. The Supreme Court, basing its decision on the ground that the trial court overstepped its jurisdiction in granting said pension in view of the fact that the existence of the marriage alleged by said Oben was not admitted, but denied by the defendant-petitioner Yangco, said the following:

"The court below had jurisdiction to try the divorce suit, but he was without jurisdiction to grant alimony when the right to claim alimony had not accrued in accordance with the provisions of the Civil Code. This Code only grants the right of alimony to a wife. This status not appearing by a final judgment, the court is without jurisdiction to make any order in the matter. Therefore mandamus is the proper remedy upon the facts related.

"It is not necessary to decide at this time if an exception could be made with respect to a case in which the fact of the marriage is admitted of record by the defendant. In the case before us this fact was denied. The motion and demurrer are overruled and the defendant is authorized to answer the complaint within twenty days from this date."

And in the case of Lanzuela Santos vs. Sweeney (4 Phil., 79) a petition for prohibition presented by the petitioner was denied because that case dealt with an action for divorce and the marriage

which was sought to be dissolved in said action was admitted by the petitioner and the Court said the following:

"Article 68 of the Civil Code provides that after a complaint for divorce has been filed and admitted, certain action is to be taken by the court, including the allowance of alimony for the woman and such of the children as are not in the possession of the father. Upon this provision of the law the judge directed the payment of alimony for the support of the children and their mother, and also the payment of suit money, chargeable to the conjugal partnership. Consequently the relief prayed for can not be granted.

"The petition is dismissed and the writ of prohibition denied, with the costs against the petitioner."

The same doctrine prevails in the United States, for on page 901 of the Ruling Case Law, Volume 1, the following is said:

"47. IN GENERAL.—It may be stated as a general rule that the power to award an allowance of alimony pendente lite is strictly limited to actions involving an assertion of the existence of the marital relation between the parties, and the corresponding duty of maintenance which a husband owes to his wife, such as actions for divorce, actions for separate maintenance, and some instances of nullity suits. For this reason an allowance cannot be granted in any action which is not matri-

monial in its character. * * * "

This action not being one for divorce or annulment of marriage, and the defendant entity not having the legal obligation to support and educate the plaintiff with the funds of the chaplaincy in question, for, while the right of the plaintiff to be appointed chaplain is not finally determined and he is not appointed as such, he has no right to receive even one centavo from said funds, it is clear that the Court has exceeded its jurisdiction or had no jurisdiction to compel the defendant entity to pay said pension.

The irreparable damages to be caused the defendant responsible for said funds is self-evident, if he is compelled *pendente lite* to pay such pension to the plaintiff who is insolvent, and afterwards the judgment of this court is reversed by the Supreme Court.

Manila, January 7, 1927.

ARANETA & ZARAGOZA
FERIA & LA O
By (Sgd.) F. R. FERIA.
Attorneys for defendant.
China Bank Bldg., Manila.

Under date of January 11, 1927, the attorneys for the plaintiff filed the following answer to said memorandum:

(CAPTION AND TITLE OMITTED)

REPLY TO DEFENDANT'S MOTION FOR A NEW TRIAL

We understand that defendant's motion for

new trial is only a formal compliance with the provisions of the Code of Civil Procedure for the perfection of an appeal to the Supreme Court, except in so far as it refers to the portion of the judgment of this court which reads as follows:

> "(d)—Ordering defendant, pending the final termination of this action, to allow and pay to plaintiff out of the accumulated funds of the chaplaincy of Petronila de Guzman, for his maintenance, education and legal expenses, a pension of One Thousand Pesos (P1,000.00) a month, payable within the first five days of January, 1927, and within the first five days of each succeeding month."

Counsel for defendant, in their memorandum, as well as in the oral argument, urged the annullment of the above quoted portion of the judgment upon the ground that there is no law or jurisprudence authorizing this court to compel the defendant to pay to the plaintiff a pension *pendente lite*, and cited the case of Yangco vs. Rhode (1 Phil., 404) in support of their contention.

That case, however, is entirely different from the present case. In that case the order of Judge Rhode for the payment of alimony was entered before the trial of the cause on the merits, and the Judge himself in his order said that "the question (as to the alleged marriage) is not clear nor free from doubt." The Supreme Court, in issuing the writ of prohibition, emphasized this phase of the case. (See p. 406, Vol. 1, Phil. Rep.) If Judge Rhode had made the order for alimony after the

trial of the cause on the merits and had clearly found the marriage to be valid, the Supreme Court would probably not have issued a writ of prohibition against such order.

In the present case, the order in question was made after the trial of the cause on the merits and after the court had clearly found that the plaintiff is entitled to the funds out of which the allowance was to be paid.

All the authorities cited by defendant refer to "alimony", which is defined as "the allowance which a husband may be compelled to pay to his wife for her maintenance when she is living apart from him, or has been divorced." (1 R. C. L., 864). The pension or allowance which this Honorable Court has ordered the defendant to pay to the plaintiff pending the final termination of this action is not "alimony" but a disbursement of the trust funds, now in the hands of the defendant as trustee, in favor of the cestui que trust.

There is no dispute as to the fact that the property in question belongs exclusively to the chaplaincy of Doña Peetronila de Guzman. The defendant Archbishop himself admitted this in his deposition. It is also hardly disputed that the only right or interest of the defendant in said property is as administrator in accordance with the will of the foundress and the acceptance of the foundation by the defendant. The defendant Archbishop himself admitted in his deposition that the plaintiff is

the only claimant to said chaplaincy. The proof adduced by the plaintiff, without any contradiction from the defendant, is that the plaintiff is the nearest relative of the first chaplain who is a candidate to this chaplaincy, and is the person entitled to the income of the property of said chaplaincy. Counsel for the defendant, during the oral argument upon the motion for a new trial, stated in open court that the Archbishop is ready and willing to support and educate the plaintiff in a seminary pending the final termination of this action. In other words, while the defendant is not disposed to pay ₱1,000.00 a month to the plaintiff pending the final termination of this action, it is willing to spend a smaller amount for his maintenance and education in a seminary pending the final termination of this action. This attitude of the defendant is inconsistent with the denial that the plaintiff has any right whatever to the chaplaincy in question.

This is not an ordinary action at law to recover certain property from the defendant, as counsel intimated during the hearing of the motion for a new trial. This is an action in equity to compel the defendant as administrator or trustee to fulfill its trust. The order in question is within the power of a court of equity in the exercise of its supervisory authority over administrators and trustees.

"B. *Judicial Supervision and administration in General.* A court of equity has an extensive

jurisdiction over charitable uses and trusts, not only to uphold them and to recognize their validity, but also to protect them, prevent their misuse or abuse, and enforce their execution. This jurisdiction exists, although the instrument creating the trust does not expressly confer it, and sometimes the instrument does expressly or impliedly show an intent to vest a supervisory power over the management and control of the trust property in a court of equitable jurisdiction, and in some states the jurisdiction is expressly conferred, or at least restored, by statute. The jurisdiction includes power to construe the trust instrument, to remove or to suspend an unfaithful trustee, *to correct irregularities in administration, to restrain a contemplated breach of trust or abuse of power by the trustee,* to protect the trust property from loss or divirsion, *to give directions for the future administration of the trust,* and to instruct the trustees in case of doubt as to their powers and duties. The court, in all of its doings, represents the persons, institutions, and classes who are to be benefited. The supervisory power of courts of equity often enables them to control the trustees in the direction and management of the trust, but they have no authority to interfere with the just exercise of the trustees' powers and duties. In other words, while the ultimate control rests in the court, and the court will decide, as a question of fact, whether the trustees have reasonably and fairly exercised with their discretion, yet a charitable trust will not be inter-

fered with while the trust estate is being managed according to the donor's intention; and where a discretion has been committed to the trustees and is being fairly and honestly excercised by them, the court will not control or interfere with it, or substitute its own discretion for that of the trustees. Even as to charities, equity will not, in the absence of bad faith, necessarily interfere in trivial matters. The jurisdiction of a court of equity or chancery is not so extensive as to authorize its interference in all cases. Its jurisdiction is not to create or to alter the trust, but its powers are confined to the mere execution of the trust, *to secure the faithful application of the fund or property to the use and object indicated in the deed or will, or, in other words, to carry out the intention of the grantor or testator as thus expressed.* The jurisdiction of chancery over charities extends to such as are founded or supported by voluntary contributions or subscriptions when there is property impressed with a charitable trust. There is a wide distinction between a gift to a charity and a gift to a trustee to be applied to a charity, as in the former instance all that is necessary to be done is for the court to award the fund to the particular charity, the action of the court in this respect being ministerial only; whereas in a gift to a trustee to be applied to a charity, the court has jurisdiction over the trustee, as it has over all trustees, to see that he does not commit a breach of his trust or apply the fund in bad faith or to purposes that are not charitable. Al-

so, a scheme of charity of to be distinguished from a scheme or plan for administering it; in the former, while the courts may be expressly or impliedly empowered by the donor to direct the particular manner of carrying out the scheme, they cannot infringe upon, change, or modify the nature of the charity as established by the donor, or modify the manner of administration which he has particularized." (11 C. J., pp. 356—358).

Defendant assails the order in question upon the ground that in the event the decision of this court be reversed by the Supreme Court the plaintiff would not be able to pay back what he will have received by way of monthly allowances under said order. We submit that the present defendant has not as good a cause for complaint upon that ground as would have the defendant in an action by the wife against her husband for maintenance, and in which he is ordered by the court to pay to the plaintiff *pendente lite* alimony and attorneys' fees, notwithstanding his defense (as is usual in such a case) that his wife has committed adultery and therefore, he is not legally bound to support her (Article 152, in relation with Articles 855 and 105 of the Civil Code). In such a case there is also a possibility that the appellate court may find the allegation as to adultery to have been fully established and declare that the plaintiff is not entitled to support; and yet, so far as we have been able to ascertain from an examination of the reported cases, the authority of the trial court to enter such

an interlucotory order has never been assailed or denied upon the ground that the plaintiff wife would not be able to pay back what she will have received by way of alimony and attorneys' fees in the event the defendant should be absolved from her complaint. In the case, for instance, of Gorayeb vs. Hashim (G. R. N. 22125), the Court of First Instance of Manila ordered the defendant to pay to the plaintiff, his wife, a pension of ₱1,000.00 a month *pendente lite*, notwithstanding that in that case the defendant Hashim interposed the defense of adultery on the part of the plaintiff. The plaintiff in an action for maintenance is, of course, without property or income of her own and, therefore, it is undeniable that she would not be able to refund what she would have received under an interlocutory order of the trial court in case the defendant should be absolved from her complaint. And yet the defendant in such a case has to pay the pension out of his own property and in most cases out of the product of his own labor.

In the present case the monthly allowance, or rather installments, which the defendant is ordered to pay to the plaintiff, will not be taken from defendant's own property or funds but from the funds of a trust of which the plaintiff has been clearly shown to be the beneficiary. The pretension of the present defendant that it has the right to dispose of or appropriate said funds by authority of the Pope does not deserve as much consideration in this connection as the defense of the hus-

band, in an action for maintenance, that his wife has committed adultery.

In other words, although the defendant in such an action for maintenance, as above described, may suffer an irreparable injury on account of the inability of the plaintiff to repay the amounts received by her by way of pension under an interlocutory order should the appellate court absolve him from the complaint, the authority of the trial court to make such an interlocutory order in such a case has never been and cannot be assailed or denied. In the present case, even if the Supreme Court should reverse the decision of this court (a possibility which we do not expect), the defendant would not have paid a cent out of its own funds but would only have disbursed a small portion of the funds or income of certain trust property over which this Honorable Court, as a court of equity, has ultimate control under the law.

This court having clearly found after a due trial of the cause on the merits that the plaintiff is the beneficiary of the trust property in question, the presumption is that such finding is correct until it is reversed by the Supreme Court, and this court, in the meantime, has the right to act under that presumption for the purpose of exercising its supervisory authority and control over the trust property in question.

For all of the foregoing reasons, we submit

that defendant's motion for a new trial should be denied in toto.

Manila, P. I., January 11, 1927.

Respectfully submitted,
GIBBS & McDONOUGH,
By A. D. GIBBS
Attorneys for Plaintiff,
302 Roxas Bldg., Manila.

Under date of January 20, 1927, the Court entered the following order:

(CAPTION AND TITLE OMITTED)

ORDER

The defendant has filed a motion for a new trial, alleging with some detail that the evidence does not justify the decision and that the decision is contrary to law.

The defendant contends that the court is without power to compel the defendant to grant the plaintiff an allowance of ₱1,000 a month for his maintenance, education and legal expenses pending the final determination of the case.

The court has rendered a judgment in favor of plaintiff for the full amount shown to have been collected by the defendant as administrator of the Capellania in question from December 31, 1910, to December 31, 1925.

After considering the argument of counsel the court is in doubt as to its authority to enforce the payment by the defendant of an allowance of

₱1,000.00 a month pending the appeal and final determination of this case, and for this reason hereby revokes that part of the judgment ordering the defendant, pending final determination of this action, to pay to plaintiff out of the accumulated funds of the Capellania of Petronila de Guzman for his maintenance, education and legal expenses a monthly pension of ₱1,000, payable within the first five days of January, 1927.

The decision and judgment in this case, as modified, being in the opinion of the court in accordance with the law, the motion for new trial is overruled.

Manila, P. I., January 20, 1927.

(Sgd.) GEO. R. HARVEY
Judge.

On the 24th of January, 1927, the defendant was notified of the foregoing order, and on January 29, 1927, said defendant filed the following pleading:

(CAPTION AND TITLE OMITTED)

EXCEPTION AND APPEAL

Come now the undersigned attorneys in behalf of the defendant in the above entitled case, and hereby except to the order of this Honorable Court of January 20, 1927, (received by undersigned counsel) which denies the motion for new trial filed by the defendant, and at the same time anounce their intention to appeal from the decision entered

in this case, as amended, to the supreme Court.

Manila, January 29, 1927.

ARANETA & ZARAGOZA
FERIA & LA O
By (Sgd.) F. R. FERIA
Attorneys for defendant
China Bank Bldg. Manila.

On March 31, 1927, the case was duly registered under No. 27619 of the General Register of the Supreme Court of the Philippine Islands.

On July 15, 1927, counsel for defendant-appellant filed their brief, assigning the following errors:

ERROR No. 1

The trial Court erred in ordering the defendant forthwith to appoint plaintiff as Chaplain of the Chaplaincy in question notwithstanding the fact that plaintiff is only twelve (12) years old and is not a cleric.

ERROR No. 2.

The trial Court erred in declaring that the defendant was not duly and legally authorized to use the income of said Chaplaincy for analogous charitable and pious works during the time the Chaplaincy in question has been vacant.

ERROR No. 3.

The trial Court erred in declaring that it had jurisdiction to compel the defendant to do a canonical function, to wit: that of appointing plaintiff as Chaplain of the Chaplaincy in question.

ERROR No. 4.

The trial Court erred in not accepting as conclusive the decision of the ecclesiastical authority concerned, in regard to the question whether or not plaintiff is ecclesiastically qualified to be appointed as Chaplain.

ERROR No. 5.

The trial Court erred in not holding that there is no evidence in record that plaintiff was the nearest relative of the foundress, and therefore that plaintiff has not shown that he is entitled to be appointed chaplain.

ERROR No. 6.

The trial Court erred in sentencing the defendant to pay the plaintiff the sum of ₱173,720.00 less certain liquidated as well as unliquidated amounts referred to in the judgment.

On September 10, 1927, the attorneys for the plaintiff and appellee filed their brief in the Office of the Clerk of the Supreme Court.

On October 11, 1927, the case was finally submitted to the Supreme Court of the Philippine Islands for decision on the merits.

On February 4, 1928, the said Supreme Court rendered its decision in the case, which is in words and figures following, to wit:

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

In the Supreme Court of the Philippine Islands
In Banc

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ, Plaintiff and Appellee, vs. THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, Defendant and Appellant.	G. R. No. 27619. Present: Street, Malcolm, Villamor, Ostrand, Johns, Villa-Real, J J. Submitted ..... Promulgated Feb. 4, 1928.

DECISION

STREET, *J.*:

This action was instituted in the Court of First Instance of Manila by Raul Rogerio Gonzalez, through his guardian *ad litem*, Adelaida Gonzalez, against the Roman Catholic Archbishop of Manila, a corporation sole, represented by His Grace, M. J. O'Dougherty, Apostolic Archbishop, for the purpose of obtaining a writ of mandamus requiring the respondent to appoint the plaintiff to a vacant chaplaincy, to enforce an accounting for the income of the chaplaincy for the period during which it has been vacant, and to secure other relief. Upon hearing the cause the trial court entered judgment which, as subsequently amended,

embraces three features, namely: First, ordering the defendant, the Roman Catholic Archbishop of Manila, as a corporation sole, and His Grace, Michael J. O'Dougherty, Roman Catholic Apostolic Archbishop of Manila, its sole representative, forthwith to appoint plaintiff, Raul Rogerio Gonzalez, as chaplain of the said chaplaincy founded by Doña Petronila de Guzman; secondly, ordering the defendant to pay to the plaintiff, through his guardian *ad litem*, the sum of One Hundred Seventy-three Thousand, Seven Hundred and Twenty-five Pesos (₱173,725.00) as the rents and income of the property of said chaplaincy from January 1, 1911, to December 31, 1925, plus the rents and income accrued since December 31, 1925, from the total of which should be deducted the expenses allowed by the court as legitimate charges against the fund, and requiring the defendant, furthermore, to pay to the plaintiff, through his guardian or guardian *ad litem*, from the date of plaintiff's appointment as chaplain, the net income of said property from time to time as collected; thirdly, reserving to plaintiff any legal rights that he may have with reference to the cancellation of the Tranfer Certificate of Title No. 17603 in a proper proceeding before the Fourth Branch of this court, which branch has exclusive jurisdiction of all cases relative to the registration of real estate in the city of Manila (Act No. 2347, Sec. 11). From this judgment the defendant appealed.

On March 13, 1816, Doña Petronila de Guz-

man, a resident of what is now the district of Binondo, in the city of Manila, executed a will in which she instructed her executor to take the steps necessary to the foundation of a collative chaplaincy upon certain real property adjacent to her residence in Binondo. The part of the will pertinent to the foundation is found in three paragraphs of the will which read as follows:

> "Ninth Item:—I declare and dispose that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister Da. Vicenta de Guzman we have constructed with our own money, the expenses of which amount to one thousand six hundred pesos without including the value of the lot on which it is erected, and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, choosing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. José Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian of San Juan de Letran, who should be an orphan *mestizo*, native of this said town, and I request the Father chaplain to celebrate sixty masses annually, which should be said in the churches of the City of Manila or in those outside of its walls, and in privileged altars, in behalf of the souls of my father, Dn. Tomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and of my brothers and sisters, and for me, the testatrix, after my days.
>
> "Tenth Item:—It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.
>
> "Eleventh Item:—I appoint my first execu-

tor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain."

The property thus intended as the foundation of the chaplaincy consists of the lots now known as Nos. 210, 212 and 214, Rosario Street, Manila, with the improvements thereon.

After the death of the testatrix her executor, Don José Telesforo de Guzman, on April 24, 1820, addressed a petition to the Archbishop, informing him of the wishes of the testatrix and praying that the property be declared sufficient and that the chaplaincy be created, with the petitioner's son as chaplain and the petitioner himself as administrator of the property during the minority of the son. This petition, addressed by the executor to the Archbishop, in the part material to be here considered, reads as follows:

"Most Illustrious and Most Reverend Sir—Don Jose Telesforo de Guzman resident of the town of Binondo with all due respect, before Your Illustrious Grace in the best legal form, I present myself and say,—That the annexed testimony which with due solemnity I enclose shows that my deceased great grandmother Da. Petronila de Guzman provided in her last will the institution of a collative chaplaincy for one son of mine named Esteban Sixto de Guzman, student of the Royal College of San Juan de Letran, for the patronage of which the Most Reverend Father President of said College has been named, with a house of lime and stone situated at Calle Rosario as capital, which, according to the Certificate hereto attached, nets a rent of One Hundred Eighty Pesos Annually, it being located on the Calle Real del Ro-

sario; and I, being her testamentary executor and appointed administrator of my above mentioned son, present myself before Your Most Illustrious Grace, praying that you declare the living sufficient and order that a title to said chaplaincy issue to my said son and to me the administrator during his minority."

In support of this petition the executor of the will of the foundress executed, on April 26, 1820, a formal document of endowment, setting aside for pious uses the property intended for the foundation and transferring it to the spiritual properties of the archbishopric. This document, omitting formal parts at the end, reads as follows:

"In the City of Manila on the 26th day of April one thousand eight hundred and twenty, before me the Clerk of Court and the undersigned witnesses, (appeared) D. Jose Telesforo, resident of the Town of Binondo, and testamentary executor of the deceased Da. Petronila de Guzman, as shown by the certificate which was shown me and which appears to have been sealed and signed by the Public Clerk Dn. Francisco Castro de Reyes, to me known, and said—

"That whereas the said Petronila de Guzman, deceased, has ordered in the ninth clause of her will that after her death a house of lime and stone belonging to her be constituted into a chaplaincy, which house had been constructed by her and her deceased sister Doña Vicenta de Guzman who died single, the expenses of the construction of which amounted to One Thousand Six Hundred Pesos without including the value of the lot whereon said house is erected, in said Town of Binondo, being bounded towards the right of its exit by the house in which the said testatrix formerly lived, which was her own; and to accomplish the foundation of

said chaplaincy in accordance with law, the said executor appeared before the Most Illustrious and Most Reverend Metropolitan Archbishop, stating that (the chaplaincy) was subject to the charge that the incumbent was required to say sixty masses annually, either in the churches of this City or in those without its walls, and in privileged altars, for the benefit of the souls of her deceased parents, Don Tomas de Guzman and Doña Sebastiana de Jesus, of the testatrix and of her brothers and sisters, electing as chaplain her great grandson Don Esteban de Guzman, a student of the Royal College of San Juan de Letran, and as administrator during the minority of the said chaplain, the executor himself, upon whom she has conferred power to appoint as patron of the chaplaincy the Father president of the said Royal College of San Juan de Letran, asking that the said living (congrua), the rents of the property of which amount at present to P180.00 per year, be declared sufficient, issuing the corresponding title of chaplain to his said son (i. e., of the executor); and as a consequence whereof he (i. e., the exetor) segregates said property from temporal properties and transfers it to the spiritual properties of this Archbishopric, with the restriction that, as a spiritual property, it cannot be alienated or converted into any other state for any cause, even though of a more pious character, (the grantor) protesting that if the contrary should be done from now until then, he declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents, and the said executor affirms and ratifies said condition before me and the witnesses hereinbelow named, so that by virtue of this Deed of Foundation canonical collation may be conferred on the said appointed chaplain. And for its stability and greater validity he renounces with all solemnity the laws that may favor the said decedent, inserting and repeating herein all the clauses that may be necessary

with all the requisites and conditions, so that the purpose which actuated her to do this act of piety may be duly accomplished, with the solemnities above set forth and the conditions herein inserted, which he asks and charges the above named chaplain and those who will succed him to respect, comply and execute *ad perpetuam rei mei memoriam amen.*"

The two documents from which we have just quoted appear to have been passed to the *procurator fiscal* for comment; and this official made indorsement to the effect that no reason occurred to him for opposing the project and that he accordingly recommended that the establishment be effected. The matter was then brought to the attention of the Archbishop who gave the necessary formal approval to the foundation and an appropriate decree to this effect was entered. According to the note of this decree, His Grace declared that "concurring entirely with what had been expressed by the *promotor fiscal*, he was approving and approved the foundation of said chaplaincy, with all the circumstances and conditions specified in said clause (of the will) and the deed of foundation, as also the charge of ₱1,700.00 upon said house, erecting said sum into spiritual property and making it, as he makes it, by perpetual title, to be of the ecclesiastical forum and jurisdiction."

Since the foundation of this chaplaincy, five chaplains have been appointed thereto by the Archbishop of Manila. The first and second chaplains were great grandsons of the foundress, the third

was a great great grandson, and the fourth and fifth great great great grandsons. At the time of their appointments they were respectively more than 13, 21, 22, 27 and 19 years old.

The fifth and last chaplain or beneficiary of the chaplaincy in question was Angel Gonzalez, father of the present plaintiff. This individual resigned the office of chaplain, effective December 6, 1910, since which date the chaplaincy has remained vacant. Though not of decisive importance in the case, the document by which Angel Gonzalez was appointed to the chaplaincy on August 21, 1901, is perhaps instructive as indicating the nature of the rights appurtenant to the office. Omitting the formal conclusion, this document reads as follows:

> "Whereas, the Chaplaincy founded by Da. Petronila de Guzman, the capital of which consists of a building of brick and mortar erected on its own lot located on the Calle de Rosario, District of Binondo, is now vacant because of the renunciation by its last possessor D. Fernando Maniquis y Guzman; now, therefore, the necessary requisites and qualifications according to law being found concurring in D. Angel Gonzalez y Guzman, tonsured, a boarding student in the College of San Juan de Letran of this City, we order to issue and do issue this present title by virtue of which we elect and appoint the above-named D. Angel Gonzalez y Guzman, as chaplain of the benefice above referred to, and by the manner and form which we best can do, we hereby give him collation, canonical institution and real possession vel quasi of the above-mentioned chaplaincy, which shall be administered as heretofore by the administrator of the funds of this Holy Archbishopric, so that, as such

chaplain he may possess and enjoy it as an Ecclesiastical benefice and by perpetual title with the obligation of ordering to be said, by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the foundress, and with the understanding that every year he has to show to our Court of Chaplaincies wherein this shall be recorded, that he has discharged said masses, without which requisite the rent which for the purpose may be necessary shall be withheld from him. And by virtue of Holy Obedience we order those to whom these presents may concern to have and treat the said D. Angel Gonzalez y Guzman as the beneficiary and possessor of said chaplaincy, and that they pay him well and faithfully the income which in the future the capital may produce and that which it has produced while vacant, placing upon his conscience the duty of complying with the annexed conditions and relieving us thereof."

The function of administering the property pertaining to the foundation appears to have been exercised, at least since about 1863, by the Archbishop; and for this service a commission has been charged against the incumbent whenever a chaplain has been in office. In September, 1914, a Torrens title in fee simple was issued for the property in the name of the Archbishop. During vacancies the duty of causing sixty masses to be said per annum, as provided in the will, devolves upon the Archbishop; and this obligation has been performed by the present respondent, at an expense of not more than ₱300.00 per year.

The trial judge found that, from January 1, 1911, to December 31, 1925, the administrator had

obtained, in the way of rents of the property, a total of ₱153,600.00. In addition to this there was collected, in the year 1912, the sum of ₱20,125.00, as insurance, upon occasion of the destruction by fire of the house belonging to the chaplaincy. The expenses of rebuilding and repairs, over the same period, is stated to have been ₱24,503.34. All of the income thus received, less the expenses of administration and cost of the masses, has been applied to the purposes of education, beneficence and charity, under the directions of the Archbishop, with the approval of His Holiness, the Pope.

Since the Council of Trent it has been the law of the Roman Catholic Apostolic Church that no person who has received the first tonsure or who has already been ordained in minority is eligible to a benefice before his fourteenth year (Council of Trent, Chap. 6, Sec. 23, July, 1563), that is to say, he must be at least thirteen years and one day old. With this exception there seems to have been no ecclesiastical law or ordinance of the Church in force at the time the chaplaincy in question was founded, prescribing ecclesiastical qualifications for incumbents of the office of chaplain. However, in the year 1918 a new canon law was promulgated by the Catholic Church to the effect that "the chaplaincies, or simple benefices, are conferred on clericals of the secular clergy"; and in order to be a clerical, one must have received the first tonsure. Also in order to take the first tonsure, one must have begun the study of theology, and in or-

der to study theology, one must be a bachelor.

Raul Rogerio Gonzalez, the plaintiff in this action, was born on September 16, 1912. He was therefore nearly twelve years of age when this action was instituted on July 31, 1924. He is a son of Angel Gonzalez, the last incumbent of the chaplaincy in question. At the trial the young man testified that he was then a student in the sixth grade of the public school and that his inclinations and desires are towards an ecclesiastical career. More than two years prior to the institution of this action he was presented to the Archbishop of Manila, with the request that he be appointed to the chaplaincy in question, he being at that time ten years of age. The application was turned down by the Archbishop in a letter, addressed to the boy's father, and dated March 20, 1922, on the ground that the youth did not have the necessary qualifications under existing canon law. His Grace, the Archbishop of Manila, testified that although he could not appoint plaintiff as chaplain of the chaplaincy in question, he had made an offer at his expense to educate the plaintiff so that he might obtain the necessary preparations to qualify himself as a cleric and might later be appointed as chaplain. He added, however, that although he did not consider himself in duty bound to make such an offer, the same was made for equitable motives in view of the claim of the child as the nearest relative of the foundress of the said chaplaincy.

In the deed of foundation of April 26, 1820, the Presiding Father of the Royal College of San Juan de Letran is designated as patron of the chaplaincy; and before this action was instituted, Father Calixto Prieto, then rector of San Juan de Letran College, addressed a letter to the Archbishop, presenting the plaintiff as candidate for the chaplaincy. Father Prieto stated that, prior to presenting the plaintiff for the chaplaincy, he satisfied himself that the applicant was the heir to the chaplaincy, but did not take account of his moral or intellectual qualifications, leaving these matters to be passed upon by his superior. The application of the plaintiff was also indorsed by other priests of the church.

We now pass to the consideration of the nature of the chaplaincy, or office of chaplain, as understood in Spanish and ecclesiastical law. In the first place, it is to be noted that the collative chaplaincy is a form of ecclesiatical benefice, in which the incumbent is appointed and canonically installed by the Bishop, or Archbishop, and given a living, constituting a charge upon specified property, subject to the duty of saying masses and performing other pious or religious duties. The collative chaplaincy is said to be a simple benefice. In the second place, the term "collative chaplaincy" is used in contradistinction to "lay chaplaincy"; and the difference is that the collative chaplaincy can be constituted only upon the intervention of ecclesiastical authority, while the lay chaplaincy does not

require such intervention.

In the case before us it is undeniable, and admitted, that the chaplaincy in question is of the sort known as the collative chaplaincy. The documents of foundation expressly provide that this chaplaincy shall be of a collative character; and to this end the property which was to serve as the foundation of the chaplaincy was segregated by the executor of Doña Petronila de Guzman from other property pertaining to her estate and transferred to the Church, with the effect of its being converted into spiritual property for the pious use intended. Furthermore, in accepting the transfer, the Archbishop declared that said property was raised to the status of spiritual property and that it thereby passed to the ecclesiastical forum and jurisdiction. Speaking broadly, the substantial effect of the conveyance of the property to the Church and the acceptance of the transfer by the Archbishop in the manner above stated was that the legal title of the property became vested in the Archbishop, subject to the ecclesiastical charge intended in the creation of the chaplaincy.

The trial judge found that the plaintiff is next of kin (*pariente más cercano*) to the foundress of the chaplaincy, in the sense intended in the Ninth Item of the will, and, therefore, that he is qualified for the chaplaincy in point of relationship. Exception is taken to this finding by the appellant, who maintains that there is no evidence in the re-

cord to support it. We are of the opinion, however, that the proof on this point is sufficient, and we shall assume in what is to follow that the necessary relationship on the part of the plaintiff to the foundress exists.

As has been already stated, this action was instituted shortly before the plaintiff had reached the age of twelve years; and upon this fact the appellant plants the proposition that the plaintiff is not qualified for the chaplaincy on point of his age. The appellee has attempted to meet this criticism by the filing of an amended complaint on April 5, 1926, when the plaintiff was in his fifteenth year. We shall therefore assume, for the purposes of this decision, that the immaturity of the plaintiff in point of age is not a fatal obstacle to the maintenance of the action; and at any rate in the view we take of the case this question may be ignored.

Upon turning our attention more directly to the legal aspects of the controversy, we discover that the case of the plaintiff proceeds upon a train of reasoning which may be expressed as follows, namely, that the Archbishop, as representative of the Church, is the holder of the empty legal title to the property on which the chaplaincy is founded; that the beneficial interest thereto is vested exclusively in the heirs of the foundress; that the plaintiff, as her next of kin, has an unqualified right to be appointed to the chaplaincy, without regard to his lack of ecclesiastical qualifications; that the plain-

tiff, having title to the chaplaincy, is entitled to demand of the defendant the entire net income received by the latter as administrator of the property during the pending vacancy, as well as the right to be paid the income that may hereafter be produced by the property so long as the plaintiff shall occupy the post of chaplain. In a word, it is the contention of the plaintiff that the foundation in question is a perfected trust, enforcible in a court of equity, that the Archbishop is a mere trustee, and that the plaintiff is the present rightful beneficiary of the entire property.

On the other hand, the attorneys for the Archbishop challenge practically every phase of the plaintiff's presentation of the case; and in this connection various propositions are submitted by them, which may perhaps be fairly condensed as follows: That the transfer made by the executor of the foundress of the property with which we are here concerned had the effect of conveying it to the Archbishop, as representative of the Church, in whom, upon his acceptance of the same, the entire property became vested, for the purpose of maintaining the chaplaincy in question, and subject to all the circumstances and conditions specified in the documents; that the collative chaplaincy thus constituted is an ecclesiastical benefice, the right of appointment to which is vested exclusively in the Archbishop; that the Church, by lawful ordinance, effective in 1918, has required that, in order to be

eligible to the office of chaplain, the candidate must possess ecclesiastical qualifications, of the sufficiency of which the Archbishop is constituted judge; that the plaintiff in this action does not possess the qualifications for chaplain which have thus been prescribed, and the Archbishop has so found and declared; that, by the laws of the Church, the plaintiff, if aggrieved by the decision of the Archbishop, has a right of appeal to His Holiness, the Pope, of which right the plaintiff has not availed himself; that, as the owner of the property which is the subject of this foundation, the Archbishop has the free disposition, for charitable, educational, and religious purposes, of the income derived from the property during a vacancy in the office of chaplain, subject only to the obligation of causing masses to be said as required in the documents of foundation; that the incumbent of the office of chaplain is entitled, from the bounty of the Archbishop, to receive the income derived from the property during his incumbency in the office to the extent necessary to secure a suitable living only, and that, as to the residue, it is the duty of the chaplain to apply it to charitable and religious purposes; that the subject-matter of this suit is not a proper matter of cognizance in any civil court; and, finally, that the court of origin was without jurisdiction to compel the Archbishop to perform a canonical function, to wit, to appoint the plaintiff to an ecclesiastical office.

While the field of controversy thus laid out is extensive, it will be found, upon a careful survey of

the ground, that the decision must in the end turn upon one or two vital points, which are concerned with the right of the plaintiff to the chaplaincy and the right of the court to compel the Archbishop to appoint the plaintiff to said office.

At the outset of the discussion we may state that we see no reason to question the jurisdiction of the court over the subject-matter of the action. The complaint alleges that the plaintiff is beneficiary of a trust, and that the defendant, as trustee, has refused to recognize the plaintiff's right to the office of chaplain and is diverting the income of the foundation to unlawful uses. As was observed by Mr. Justice Miller, of the Supreme Court of the United States, in the leading case of Watson vs. Jones, 13 Wallace, 679, 723, 20 L. Ed., 666, it seems hardly to admit of rational doubt that an individual may dedicate property by way of trust to the purpose of sustaining religious doctrines, provided that in so doing he violates no law of morality and gives to the instrument by which his purpose is to be accomplished the formalities which the law requires. It also seems to be the obvious duty of the court, in a case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use; and so long as there is any one so interested in the execution of the trust as to have a standing in court, it must be that he can prevent the diversion of the property or fund to other and different uses. This is the general doctrine of courts of equity as to charities, and it

seems equally applicable to ecclesiastical matters (23 R. C. L., p. 451). But while it may be, and is, the duty of the court to inquire into a case of the character stated in this complaint, the rule to be applied in determining the right to relief is to be sought in the principles governing the courts in dealing with rights derived from ecclesiastical sources.

The rule that appears to offer most assistance in the solution of the case before us is that formulated by the Court of Appeals of South Carolina in the case of Harmon vs. Dreher, Speers Eq., 87, to the effect that: Where a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right and nothing more, taking the ecclesiastical decisions out of which the civil right has arisen as it finds them, and accepting those decisions as matters adjudicated by another jurisdiction. The proposition thus stated in Harmon vs. Dreher has subsequently been considered from different points of view by many able courts, and it has uniformly been looked upon as a sound and correct statement of the law in cases where it is of proper application. Among decisions in which said rule has been quoted with approval are Watson vs. Jones, 13 Wall. 679, 20 L. Ed. 666; Lamb vs. Cain, 129 Ind. 486, 14 L. R. A. 518; 29 N. E. 13; and White Lick Quarterly Meeting of Friends vs. White Lick Quarterly Meeting of Friends, 89 Ind. 136.

Upon examination of the decisions it will be

readily apparent that cases involving questions relative to ecclesiastical rights have always received the profoundest attention from the courts, not only because of their inherent interest, but because of the far-reaching effects of the decisions in human society. Moreover, courts have learned the lesson of conservatism in dealing with such matters, it having been found that, in a form of government where the complete separation of civil and ecclesiastical authority is insisted upon, the civil courts must not allow themselves to intrude unduly in matters of an ecclesiastical nature.

It will be noted that the first and principal relief sought by the plaintiff in the case before us is to obtain from the court an order, in the form of writ of mandamus or injunction, requiring the Roman Catholic Archbishop of Manila to appoint the plaintiff to an ecclesiastical office, for that the office of chaplain is of an ecclesiastical nature is undeniable. It is a sinister omen for the plaintiff's case that no decision of any civil court whatever can be pointed to as a precedent for such an exercise of judicial power, and the mere novelty of the proposition is an argument against the soundness of the plaintiff's case. It is true that there are decisions from the Supreme Court of Spain wherein the right to the possession of properties constituting the foundation of chaplaincies has been debated, and numerous cases are found in modern Spanish jurisprudence where actions have been maintained by

heirs of the founders to recover property constituting the foundation of chaplaincies; but such actions had their basis in the Spanish legislation abolishing chaplaincies. But so far as our investigations go, and as far as the industry of counsel has revealed, no case has been discovered where Bishop or Archbishop has been compelled to appoint any person to the office of chaplain or other ecclesiastical benefice. It is also true that there are a few English and American decisions in which the rights of rectors, or ministers, after the title to the ecclesiastical office had once been acquired, have been sustained in the courts in the face of attempts to deprive them of their office. But so far as the American courts are concerned, these cases proceed exclusively on the idea of supplying redress for breach of contract; and neither American nor English jurisprudence supplies any precedent for compelling the ecclesiastical authorities to appoint a person to an ecclesiastical office.

In dealing with the subject of the conclusiveness of the decisions of church authorities in ecclesiastical matters the author of the monographic article on "Religious Societies," in Ruling Case Law, has this to say: "x x x x The judgment of the constituted church tribunal is absolutely conclusive upon the civil courts, whether, in the opinion of the judges of such courts, the decision appears to be right or wrong. Where a right of property turns upon such a decision, the civil

courts will allow the property to go in that direction in which the decision of the church tribunal carries it. According to the rule broadly stated by some courts, when a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the right and nothing more, taking the ecclesiastical decisions out of which the civil right has arisen as it finds them, and accepts such decisions as matters adjudicated by another legally constituted jurisdiction."

In conformity with the ideas above set forth, it is insisted, for the appellant, that it was erroneous on the part of the trial court to order the defendant to perform the canonical act of appointing the plaintiff chaplain of the chaplaincy in question, and furthermore that the trial court erred in not accepting as conclusive the decision of the Archbishop in regard to the question whether or not the plaintiff is ecclesiastically qualified to be appointed chaplain. The authorities, we think, strongly indicate that there is merit in this contention. But in our opinion there is another proposition, still more clear, upon which the decision can be safely rested, and this is that as a matter of fact the plaintiff does not possess the qualifications necessary for appointment to the office of chaplain and consequently that the Archbishop was justified in refusing to oppoint the plaintiff to that office. We shall therefore provisionally assume that it is proper for the court to inquire

into these qualifications and state our conclusion with respect thereto.

Under the law of the Church as it stood when this chaplaincy was created, no ecclesiastical qualifications were required in a candidate for appointment to the office of chaplain; but as we have already stated, a new canon became effective in the Church in 1918 to the effect that, in order to be appointed chaplain, the candidate must be a clerical, and that in order to be a clerical, one must have taken the first tonsure, as a prerequisite to which he must also be a bachelor who has begun the study of theology. It is admitted that the plaintiff in this case does not possess these qualifications, and it is obvious that if the new canon is to be applied to the chaplaincy in question, the action of the Archbishop in refusing to appoint the plaintiff was correct and this court must recognise the validity of his exclusion from the chaplaincy.

That the new canon is valid and applicable to candidates for chaplaincies already created is, in our opinion, obvious since it is general in terms and evidently intended to be applicable to all chaplains appointed in the future. There is no reason discernible why the court should read into it an exception in favor of candidates to chaplaincies already created. But it is said that, if interpreted in this sense, the ordinance will be retroactive. This is in our opinion a mistake. If the Church had at-

tempted to make the ordinance applicable to chaplains already appointed, thereby depriving them of an office as to which title had been previously acquired, the effect would be to make the statute truly retroactive. But such is not the case now before us.

When the foundress caused this property to be originally conveyed to the Church as a foundation for the chaplaincy in question, no restriction was imposed with respect to the requirement of ecclesiastical qualifications for the chaplains to be appointed to the benefice; and in submitting the appointment of the chaplains to the ecclesiastical authority, as resulted from the creation of a collative chaplaincy, it must be considered as an implied term of the agreement that the ecclesiastical qualifications for the spiritual office should be such as might be required by the Church. As was said by Mr. Justice Miller in Watson vs. Jones, 13 Wall. 679, 729, all who unite themselves to an ecclesiastical body do so with an implied consent to submit to the Church government and they are bound to submit to it.

The trial court appears to have been of the opinion that the new canon of 1918 cannot be given effect as regards the chaplaincy in question for the reason that to do so would impair the obligation of the trust involved in the acceptance by the Archbishop of the provisions for the establishment of the chaplaincy, with the result of impairing the

obligation of a contract in violation of our Organic Act. This idea is in our opinion fallacious. It is undeniable that under Spanish law an ecclesiastical canon such as we are now considering could have been adopted regardless of its effect upon the foundation or the persons interested therein, and it cannot be admitted that an obligation which could be changed under Spanish law has become imutable from the promulgation by Congress of the constitutional provision forbidding the impairment of contracts by legislative Acts. Under said constitutional provision obligations are to be respected as they stand, and it was not intended that, by virtue of this provision, obligations should be made more onerous to either party. If the proposition maintained by the plaintiff's attorneys be true, then we are confronted with the spectacle of a chaplaincy which is a perpetual sinecure for a chaplain without ecclesiastical qualifications. Perpetuities of any sort are objectionable, but one of this character would be intolerable. As is justly said by the attorney for the appellant, "it is unthinkable that qualifications for chaplain should remain stagnant and the same forever." In passing upon a question of this character the court is not at liberty to ignore the effects upon human society which would result from adopting the proposition upon which the case for the plaintiff here rests.

It follows from what has been said that the plaintiff has not the requisite qualifications for the

office of chaplain and the defendant, the Roman Catholic Archbishop of Manila, acted within the limits of his proper ecclesiastical authority in excluding the plaintiff from the chaplaincy in question. The trial court was therefore in error in ordering the said defendant to appoint the plaintiff as chaplain of the chaplaincy founded by Doña Petronila de Guzman. As corrollary of this, there was also error on the part of the trial court in ordering the defendant to pay to the plaintiff, through his guardian *ad litem*, the amount awarded in paragraph (b) of the dispositive part of the appealed decision.

The appellant's brief contains an elaborate discussion of the rights of the respective parties to the income of the property during the vacancy in the office of chaplain, and of the extent of the rights of the plaintiff during the time that he might occupy the chaplaincy,—all on the supposition that the right of the plaintiff to the office might be upheld by this court. But in view of the fact that we are now to reverse the judgment in its principal features, with the result that the plaintiff will not be appointed chaplain, all discussion of his rights to the income, based on the supposition of his appointment to the chaplaincy, becomes in a measure academic. We shall therefore not enter into any discussion of this phase of the case, and shall content ourselves by observing that if those who are interested in conserving the income derived from

the chaplaincy and in holding the defendant responsible for alleged improper diversion of funds should see fit to proceed judicially in an independent proceeding, the action should be brought as a class-suit in behalf of all the descendants of Doña Petronila de Guzman, since under the present decision the minor plaintiff in this action has no particular title to relief.

In paragraph (c) of the dispositive part of the appealed decision the trial court reserved to the plaintiff any legal rights that he may have with reference to the cancellation of transfer certificate of title No. 17603, in a proper proceeding before the fourth branch of the Court of First Instance of Manila. The plaintiff did not appeal from this disposition, and the appellant has not assigned error against said feature of the decision. We shall therefore not interfere with the decision on this point, but we should perhaps observe that if relief should be sought in the direction indicated the contention will probably in the end resolve itself into the question whether the Torrens certificate of title now held by the defendant should be annotated so as to show that the property covered by the certificate is held by the defendant subject to the conditions stated in the documents constituting the chaplaincy in question; and of course such proceeding ought also to be brought as a class-suit.

The judgment appealed from is therefore reversed and the defendant, the Roman Catholic

Archbishop of Manila, is hereby absolved from the complaint, without prejudice to the right of proper persons in interest to proceed for independent relief in either of the directions above indicated.

So ordered, without express pronouncement as to costs.

Ten days after the publication of this decision final judgment will be entered and five days thereafter the record will be remanded to the court below.

THOS. A. STREET

CONFORMES:

IGNACIO VILLAMOR
JAMES A. OSTRAND
ANTONIO VILLA-REAL

Malcolm, *J.*, Concurs in separate opinion.
Johns, *J.*, dissents in separate opinion.
The Chief Justice and Justices Johnson and Romualdez took no part.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

In the Supreme Court of the Philippine Islands
IN BANC

RAUL ROGERIO GONZALEZ, BY HIS GUARDIAN AD LITEM ADELAIDA GONZALEZ, Plaintiff and Appellee, vs. THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, Defendant and Appellant.	No. 27619 Submitted: Promulgated: Present: Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ.

MALCOLM, *J.*, *concurring*:—

This is a most unusual case without a parallel in American or Spanish jurisprudence. Involving as it does the relations which should exist between the State and the Church, and the status of the Church with reference to the Judiciary, the Court should enter upon consideration of the questions involved reluctantly and cautiously. This separate opinion is intended to expound the mental processes which have passed through the writer's mind in arriving at a definite decision.

The most logical method of approach is to write down those statements of fact and those propositions of law regarding which there can reasonably be no controversy. Then with these admitted facts

and law as the basis, the issue will readily disclose itself, and can be decided.

There can be no dispute on any material fact. The will of Doña Petronila de Guzman executed on March 13, 1816, the document of endowment formulated by her executor in 1820, and the acceptance of the endowment by the Archbishop of Manila, established what is known in canon law as a collative chaplaincy. The great grandson of the testatrix was specifically named as the first chaplain. Thereafter, it has been assumed that the chaplaincy was to be occupied by the nearest relative in succession of the first chaplain, and in default of the latter, a collegian of San Juan de Letran, who should be an orphan *mestizo*, native of Manila. Chaplains have presented themselves for the office, and have been approved by the church authorities without much trouble until the resignation of the last chaplain on December 6, 1910. Since that date, the chaplaincy has remained vacant. It is the purpose of this action of mandamus to require the Apostolic Archbishop to appoint Raul Rogerio Gonzalez, the son of the last chaplain, as chaplain, and to obtain an accounting of the income of the chaplaincy from 1910 until the present.

It is well to repeat that the trust was provided for spiritual purposes. A collative chaplaincy was erected. A chaplaincy, it has been said, "is an institution which has the obligation to celebrate or cause to be celebrated annually a certain number

of masses in a determined church or altar, conforming to the will of the founder. A chaplaincy is either laical or collative. x x x A collative chaplaincy is that instituted with the intervention of the ecclesiastical authority, and requires a title of ordination. It is called ecclesiastical because it is in the form of ecclesiastical benefice, and it is proper for the Bishop to confer it." (2 Alcubilla *Diccionario de la Administracion* p. 118; 11 Gutierrez *Códigos ó Estudios Fundamentales sobre el Derecho Civil Español* pp. 341-344.) The will of the founder of the collative chaplaincy entailed the obligation on the part of "the father chaplain to celebrate sixty masses annually." The document of endowment contemplated that "the incumbent was required to say sixty masses annually." It transferred the parcel of land and building now 210, 212, and 214 Calle Rosario, Binondo, Manila, to "the spiritual properties of the Archbishopric." The trust was accepted by the Archbishop "as spiritual property x x x making it x x x to be of the ecclesiastic forum and jurisdiction." The Supreme Court of Spain has held that properties aggregated to a chaplaincy with the approval of the competent ecclesiastical authority became spiritualized, and form an integral part of its endowment (*Sentencia del Tribunal Supremo*, June 1, 1863, 8 *Jurisprudencia Civil* p. 364).

When the endowment was created, there existed a unity of Church and State in the Philippines. The

change to American sovereignty caused the complete separation of Church and State. All special privileges of the Roman Catholic Church were abolished. But the property of the Church was protected since in the Treaty of Paris it was declared that the relinquishment or cession of the Philippine Islands "cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds of x x x ecclesiastical or civil bodies."

With the Church and State standing apart in the Philippines, the jurisdiction of the civil courts naturally does not extend to certain matters connected with the Church, but does extend to certain other matters which can be taken under their purview. It is well settled that the civil courts will take cognizance of cases involving property rights, and in so doing will enforce the canons of a church. (Evangelista v. Ver (1907) 8 Phil. 653.) It is the duty of the courts to see that the property dedicated to a church is not diverted from the trust. (Watson v. Jones (1871) 13 Wall. 679.)

The Catholic Church has obtained a fee simple Torrens title to the property, the source of income of the chaplaincy. It has also been using the revenue of the chaplaincy for educational purposes. Neither is permissible pursuant to the trust agreement. Nor can the Church keep the chaplaincy vacant indefinitely and in the meantime appropriate the rental of the property of the chaplaincy. To do

any of these things would be to violate the will of the foundress, for the foundation prohibited the alienation or conversion of the property "into any other estate for any cause, even though it be of a more pious character," which would make the foundation null and without value or effect. (See in this connection Government of the Philippine Islands v. Avila (1918) 38 Phil. 383.)

Up to this point, therefore, we find the following to be the situation: A trust founded for spiritual purposes; chaplains named in conformity with the foundation up to the year 1910; the will of the testatrix the supreme law which must govern; the Church without right to obtain title in its own name to the property or to divert the income from the purposes intended by the testatrix; and the courts with jurisdiction to enforce property rights. Under this admitted state of affairs, the plaintiff would have a clear right to ask the courts to assist him in getting into the chaplaincy and in securing the income of the chaplaincy for himself. But further facts, which will immediately be mentioned, alter the situation, and at once disclose the troublesome crux of the case.

When the trust was established, aside from the general provisions of the Council of Trent, there were no particular provisions applicable to chaplaincies. In 1918, the "Codex Juris Canonici" was promulgated by the Pope. According to this new canon law, "The chaplaincies or simple benefices

are conferred on clericals of the secular clergy;" in order to be a "clerigo" one must have "prima tonsura;" in order to have "prima tonsura" one must have begun the study of theology; and in order to study theology one must be a "bachiller." Broadly speaking, Raul Rogerio Gonzalez met the requirements of the Church before the canon law of 1918 went into effect. After that law was provided, he did not meet the qualifications for he was not a "clerigo," since he did not have "prima tonsura," since he had not begun the study of theology, and since he was not a "bachiller."

It was after the canon law of 1918 was decreed that Raul Rogerio Gonzalez was presented for the chaplaincy by the Rector of San Juan de Letran College, the patron of the chaplaincy—to be exact on February 25, 1922. The Archbishop of Manila considered the matter, and in a letter to the father of the boy came to the conclusion "that the child, Raul Gonzalez, does not unite the qualifications of chaplain of the said chaplaincy." The basis of the conclusion was mentioned as the new Code of Canon Law, particularly canon 1442, in relation with canons 108 and 976. His Grace closed his letter with this statement: "By the canons above mentioned, as well as other reasons which could be advanced, I believe that the child Raul Gonzalez is not legally qualified to enjoy a chaplaincy." No appeal from what amounted to a decision by the Archbishop was taken to the Pope, but instead the authority of the civil courts was invoked. In this connec-

tion, it is the established doctrine that in matters purely ecclesiastical the decisions of proper church tribunals are conclusive upon the civil tribunals. (U. S. v. Cañete (1918) 38 Phil. 253; Fussell v. Hail (1908) 233 Ill. 73.)

The vital question, on the answer to which will depend a correct decision, then, is if the church authorities in giving application of the canon law of 1918 to the spiritual trust, should be overruled by the civil courts.

The trial judge, in his learned decision, states the matter as forcefully and graphically as may be when he says: "The canon which the defendant now invokes in supprot of the refusal to appoint plaintiff as chaplain was only promulgated in the year 1918. The will was executed in 1816 and the order of the Archbishop of Manila, approving the foundation of the chaplaincy in accordance with said will, was entered in the year 1820." His Honor continues, "The Court is of the opinion that the new canon law of 1918 cannot in this case be given a retroactive effect, for to do so would impair the obligation of the trust involved in the acceptance of the provision of said will for the establishment of the chaplaincy, and it would impair the obligation of a contract in violation of the Organic Act, the Jones Law." Much can be said in support of that position. In the first place, the disposition of property in a will is governed by the law existing at the time of execution—in this instance by the law as it was to be found in

1816. In the next place, the trust agreement was in the nature of a civil contract, and as to contracts, existing statutes enter into and become a part of them—in this instance the law as existing in 1820. But the last principle is here not literally true, for the executor of the will renounced the laws which might favor the foundress.

The portion of the Organic Act, the Act of Congress of August 29, 1916, section 3, paragraph 5, providing "That no law impairing the obligation of contracts shall be enacted" is not applicable since the "law" there mentioned is an Act of the Philippine Commission or Legislature or an ordinance or resolution of a municipal council, and does not include an ecclesiastical law promulgated by the Pope for the Catholic world. The legislative power of the state has not undertaken, as in the Dartmouth College Case, to remodel the charter of an institution in most important particulars without the consent of the corporators. But following the theory pertaining to the impairment of the obligation of contracts, and by analogy applying the same principles to the canon law, it yet remains to be said that there are limitations on the application of the constitutional provision. Thus, as significant restrictions, the state cannot abridge or weaken any of the essential powers inherent in government; the state cannot abdicate its trust over property; and the Legislature cannot withdraw from its successors the power to take appropriate measures under the police power. Not only this, but charter contracts are

subject to state regulation. A party operating under a charter must conform to such rules as the state may establish. Added conditions or duties may be imposed provided they do not amount to a change in the obligations or in the substantial rights of a party. Changes may be made in the general laws even though incidental injury may result.

Construing the canon law as we must if we are to determine if it has retroactive and destroying effect, it is apparent that the highest power in the Catholic Church provided a law universal in character operative on all chaplaincies after it went into effect. The Pope did no more than did the civil authorities of Spain when in 1841 they enacted a law regulating chaplaincies. As a matter of internal discipline, the Church was attempting to make certain that all persons filling chaplaincies had the necessary training to perform their duties. General regulations were prescribed to secure the ends for which chaplaincies were erected. In the particular case before us, the father chaplain, the incumbent of a "collative chaplaincy," was expected by the testatrix "to celebrate sixty masses annually," and it would not be at all unreasonable for the canon law to prescribe qualifications for the holder of the chaplaincy sufficient to permit him to say the masses personally. The will did not negative this in any manner when the property was turned over for spiritual uses. As far as the will went, it intended to create a collative rather than a laical chaplaincy.

thus subjecting the institution to the authority and the laws of the Church, as every collative chaplaincy is so subjected.

The Supreme Court of Porto Rico has found perfectly applicable the principles of the canon law to a case brought in the secular courts, for the reason that the rights and relations in question "have been fixed by rules issued, in the exercise of its powers to govern its own institutions, by the Roman Catholic Church, the personality of which has been fully recognized by the Supreme Court of the United States and by the Supreme Court of Porto Rico, naturally within the constitutional limitations and principles of international law." (Jones, Catholic Bishop of Porto Rico v. The Registrar of Property (1912) 18 Porto Rico 124; Jones, Catholic Bishop of Porto Rico v. The Registrar of Property (1911) 17 Porto Rico 211.)

When the case between the father of the applicant and the Church was here before, this Court took under view the provision of the trust agreement relating to the administration of the property. Mr. Justice Torres, speaking for the Court, said: "This provision must be understood to be mandatory, *except as otherwise provided by the canonical laws* and as, pursuant therewith, the chief ecclesiastical authority may order for, after the latter had accepted the foundation of the chaplaincy, the administration of its property appertains to the authorities established by the Church, *pursuant to the latter's*

own laws, and this rule has been observed since 1863." (Gonzalez v. Harty (1915) 32 Phil. 328.)

The parties seem much concerned with wordly considerations, with obtaining control of the tidy sum involved. Yet if we would place ourselves in the postition of the elderly lady who conceived the foundation, it would be realized that what she desired was the saying of masses for pious purposes by a descendant, and so instituted a foundation to attain that purpose. The wishes of the foundress of the spiritual trust should govern and will rather be subserved than thwarted by the application of the canon law of 1918 to the trust.

It is not for the courts to exercise control over the dignitaries of the Roman Catholic Church in the performance of their discretionary and official duties. Rather is it for the applicant to conform to just church regulations. The courts should ponder long before compelling the defendant Archbishop of Manila to appoint a particular person to a chaplaincy, in contravention of the mandatory provisions of existing canon law.

The all controlling considerations in the disposition of this case are the intention of the foundress of the spiritual trust, which should be respected, and the impropriety of the courts invading the religious realm and their attempting to order things to be done, the performance of which appertain exclusively to the regularly constituted authorities of the Roman Catholic Church.

Premises conceded, the issue should be resolved by holding that the Court will not sanction the expedition of a writ of mandamus, directed to the Roman Catholic Archbishop of Manila, reversing him in his decision to apply the canon law of 1918 to the foundation.

I concur in the disposition of the appeal.

GEO. A. MALCOLM.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
In the Supreme Court of the Philippine Islands
IN BANC.

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,
Plaintiff and Appellee,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,
Defendant and Appellant.

G. R. No. 27619.
Submitted:—
Promulgated
Feb. 4, 1928.
Justices present:
Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ.

JOHNS, J., *dissenting*:—

In 1816 the Archbishop of Manila had not only ecclesiastical but also civil and political powers in the Philippine Islands.

In 1816 Petronila de Guzman was a resident of the City of Manila and a devout Catholic and the

owner therein of "a house of lime and stone situated at Calle Rosario," from which she received an annual net rental of ₱180.00. In accord with her religious belief, she wished to perpetuate her family name and to found a chaplaincy and provide for the saying of sixty masses annually by the Father chaplain "in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in behalf of the souls of my father, Dn. Tomás de Guzman, and of my mother, Dña. Sebastiana de Jesús, and my brothers and sisters, and for me, the testatrix after my days," and to that end and for that purpose, on March 13, 1816, she made and published her last will and testament in which she charged that the executor of her estate should "constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. José Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian (colegial) of San Juan de Letran, who should be an orphan *mestizo*, native of this town," in which it was further provided:

> "Tenth Item:—It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.
>
> "Eleventh Item:—I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain."

After the death of Petronila de Guzman, and

on April 24, 1820, her executor José Telesforo de Guzman, and under the provisions of the will, petitioned the Archbishop of Manila that the title to the chaplaincy be issued to his son Esteban de Guzman and to him as administrator during the minority of his son, which petition, among other things, recites:

> "That the annexed testimony which with due solemnity I enclose shows that my deceased great grandmother Da. Petronila de Guzman provided in her last will the institution of a collative chaplaincy for one son of mine named Esteban Sixto de Guzman, student of the Royal College of San Juan de Letran, for the patronage of which the Most Reverend Father President of said College has been named, with a house of lime and stone situated at Calle Rosario as capital, which, according to the Certificate hereto attached, nets a ren of *One Hundred Eighty Pesos Annually*, it being located on the Calle Real del Rosario; and I, being her testamentary executor and appointed administrator of my above mentioned son, present myself before Your Most Illustrious Grace, praying that you declare sufficient the income (*congrua*) referred to and other that a title to said chaplaincy issue to my said son and to me the administrator during his minority. This is what I beseech of Your Illustrious Grace, and to secure it to Your Illustrious Grace I humbly ask and request that you so decree and order as I pray for. I swear according to form—FURTHER—the deed of ownership of the house which I also attach, I request that after this petition is terminated, said document be delivered to me as above requested—JOSE TELESFORO DE GUZMAN. Manila, April 24, 1820—To the *Promotor Fiscal*—Subscribed and sealed before me, Doctor Rojas, Secretary."

April 26, 1820, the executor of the will, pur-

suant to such petition, executed a formal document for the endowment of the chaplaincy, which, among other things, recites:

> " * * * And to accomplish the foundation of said chaplaincy in accordance with law, the said executor (Telesforo de Guzman) appeared before the Most Illustrious and Most Reverend Metropolitan Archbishop, stating that he had the pension in consideration of which the chaplain had to say sixty masses annually in the churches of this City or in those of its vicinities and in privileged altars for the benefit of the souls of her deceased parents, Don Tomás de Guzman and Doña Sebastiana de Jesus, of the testatrix and of her brothers and sisters, electing as chaplain her great grandson Don Esteban de Guzman, a student of the Royal College of San Juan de Letran, and as administrator (to act) during the minority of the said chaplain, the executor himself, whom she has empowered to appoint as Patron of the chaplaincy the Father President of the said Royal College of San Juan de Letran, asking that the said 'congrua' (pension, living or maintenance) the rents of the property of which amount at present to ₱180.00 per year be declared sufficient. * * * And for its firmness and greater validity he renounces with all solemnity the laws that may favor the said decedent, inserting and repeating herein all the clauses that may be necessary with all the requisites and conditions so that the purpose which actuated her to do this act of piety may be duly accomplished, with the solemnities above set forth and the conditions herein inserted, which he asks and charges the above named chaplain and those who will succeed him to respect, comply and execute *ad perpetuam rei mei memoriam amen.*"

The "Promotor Fiscal" having first approved as legal under the canonical law the proposed en-

dowment, the petition was granted by the Archbishop as follows:

> "That in conformity with the representations of the promotor Fiscal, he was disposed to approve and did approve the foundation of the chaplaincy with all the circumstances and conditions provided for in said clause (of the will) and in the deed of foundation, as well as the imposition (charge) of seventeen hundred pesos against said building, converting said sum into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction, etc."

The last chaplain, Angel Gonzalez, served until December 6, 1910, between whom and the defendant there was a full, complete and final settlement of all of the accounts arising from, and growing out of, the chaplaincy up to December 31, 1910. The defendant after December 6, 1910, declared the chaplaincy in question vacant, and at all times since, it has remained and is now vacant. In this situation, the plaintiff minor, Raul Rogerio Gonzalez, claiming to be the eldest son of Angel Gonzalez, the last chaplain, and of his wife, Adelaida Gonzalez, and the nearest relative in succession to the first chaplain, Esteban de Guzman, and the legitimate successor to the said chaplaincy, petitioned the defendant to be appointed chaplain, with all of the rights, powers and duties as such, which petition was denied.

The original complaint in this action and the one on which the evidence was taken in the lower court was filed on August 5, 1924. The answer of the defendant was filed on October 13, 1924. The

testimony was completed on March 24, 1926, and on April 5, 1926, for the purpose of making his pleadings conform to his alleged proofs, the plaintiff filed an amended complaint, to which objection was made by the defendant and overruled by the trial court.

Upon such pleadings, including the amended complaint, the lower court in a learned, exhaustive and well written opinion of ninety-five printed pages, found all of the material facts for the plaintiff for whom it rendered judgment against the defendant as substantially prayed for in the original and amended complaints.

On appeal the defendant assigns the following errors:

"I

"The trial Court erred in ordering the defendant forthwith to appoint plaintiff as Chaplain of the Chaplaincy in question notwithstanding the fact that plaintiff is only twelve (12) years old and is not a cleric.

"II

"The trial Court erred in declaring that the defendant was not duly and legally authorized to use the income of said Chaplaincy for analogous charitable and pious works during the time the Chaplaincy in question has been vacant.

"III

"The trial Court erred in declaring that it had jurisdiction to compel the defendant to do a canonical function, to-wit: that of appointing plaintiff as Chaplain of the Chaplaincy in question.

"IV

"The trial Court erred in not accepting as conclusive

the decision of the ecclesiastical authority concerned, in regard to the question whether or not plaintiff is ecclesiastically qualified to be appointed as Chaplain.

"V

"The trial Court erred in not holding that there is no evidence in record that plaintiff was the nearest relative of the foundress, and therefore that plaintiff has not shown that he is entitled to be appointed chaplain.

"VI

"The trial Court erred in sentencing the defendant to pay the plaintiff the sum of ₱173,720.00 less certain liquidated as well as unliquidated amounts referred to in the judgment."

In the final analysis, two important and decisive questions are presented. First, the construction which should be placed upon the will of the foundress and its legal force and effect, and, second, whether or not under the pleadings and upon the admitted facts, the judgment in favor of the plaintiff can legally be sustained.

In arriving at the solution of the first question, careful thought and consideration should be given to the purpose and intent with which Petronila de Guzman executed the will in question so far it can be ascertained and determined from the instrument itself.

In truth and in fact the house in question was constructed for the sole and specific purpose of providing sufficient rental to insure the payment of the amount required to pay for the specified number of masses, and the will of the foundress

recites that the property had a net annual rental of ₱180.00, and it specifically charged and enjoined upon the executor to found a chaplaincy and to make all arrangements necessary for the saying of such perpetual masses. Upon her death such application was made to the Archbishop, and the chaplaincy was founded and the chaplain appointed in compliance with the terms and provisions of the will. A chaplaincy having thus been founded, it is important to know the meaning of that word.

Alcubilla, in his work entitled "Diccionario de la Administracion," published in 1886, Vol. 2, p. 118, says:

> "A chaplaincy is an institution which has the obligation to celebrate or cause to be celebrated annually a certain number of masses in a determined church or altar, conforming to the will of the founder. A chaplaincy is either laical or collative.
>
> "A *laical chaplaincy* is that instituted without the intervention of the ecclesiastical authority; it does not require a title in order to be ordained, and the possessor is only obligated to cause to be celebrated, or to celebrate, if he is a priest, a certain number of masses in accordance with the foundation. The laical or *mercenary* chaplaincies are not subject to the ecclesiastical authority, which, with regard thereto, has no other right than to investigate if the obligations are fulfilled; and this is one of the characteristics which most distinguish the said chaplaincies from the collative chaplaincies; x x x.
>
> "A *collative chaplaincy* is that instituted with the intervention of the ecclesiastical authority, and requires a title of ordination. It is called ecclesias-

tical because it is in the form of ecclesiastical benefice, and it is proper for the Bishop to confer it. When the foundation calls for relatives of the founder or of the persons whom he designated as trunk, to enjoy the chaplaincy, the latter is called *colativa familiar;* when individuals of a certain family are not called to the possession but the patron is authorized to appoint, then the chaplaincy is called *colativa simple* or *gentilicia.*"

It is conceded that the purpose and intent of the deceased was to found a "collative chaplaincy," and the will provides that the position should be filled by certain specified relatives. It will be noted that the deed of endowment of the executor of April 26, 1820, recites that he "appeared before the Most Illustrious and Most Reverend Metropolitan Archbishop, stating that he had the pension in consideration of which the chaplain had to say sixty masses annually in the churches of this City, etc.," and that "the rents of the property of which amount at present to ₱180.00 per year, be declared sufficient, issuing the corresponding title of chaplain to his said son." That is to say, to found the chaplaincy and to insure the saying of the masses in question, the executor proposed to the Archbishop that the estate had property which had a rental value of ₱180.00 per annum, which he was ready and willing to pay for the founding of a chaplaincy and the saying of such masses, and to insure the payment of the ₱180.00 annually, he was ready, able and willing to convey the property in trust to the church for spiritual purposes. But it should be noted that his proposition specifically

provided that the property should not be used for any other or different purpose, and that, "if the contrary should be done from now until then, he (the executor) declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents." That must be construed as a specific limitation upon the rights, powers and duties of the trustee, which would prohibit the use of the property by the trustee for any other or different purpose than the one specified in the will.

It will also be noted that the proposition of the executor was accepted by the defendant upon the terms and conditions therein stated as provided for in the will of the foundress, and Esteban de Guzman, who was then not fourteen years of age, was duly appointed by the defendant as the first chaplain in the chaplaincy as thus founded and entered upon the discharge of his duties.

The second chaplain was Vicente de Guzman, who was a brother of the first, and was appointed by the Archbishop on April 7, 1838.

The third chaplain was Mariano de Guzman, a nephew of the first, and he was appointed October 11, 1867.

The fourth chaplain was Fernando Maniquis, who was appointed May 23, 1890, and served until November 17, 1897.

The fifth and last chaplain was Angel Gonzalez, the plaintiff's father, and he was appointed on June 20, 1901, and served until December 6, 1910,

and to whom the defendant accounted for all of the rentals of the property of the chaplaincy from the date of the resignation of the preceding chaplain in November, 1897, and also the rentals of the property which were collected during his chaplaincy, and when paid to him, they were appropriated by Angel Gonzalez to his own use.

Although the defendant held the title to the property in trust, yet, apparently prior to 1863, the different chaplains had the control and management of the property, and collected the rentals, when in that year for the first time the defendant took over the actual management of the property and the collection of the rentals.

As stated, Angel Gonzalez, the last chaplain, was appointed by the defendant on June 20, 1901, and served until December 6, 1910, and to whom the defendant not only accounted for all of the rentals of the property of the chaplaincy from November, 1897, the date of the resignation of the preceding chaplain, but also for the rentals received from June 20, 1901, to December 6, 1910, during the period of his own chaplaincy. There is nothing in the record tending to show what was done with the rentals collected from 1863 to 1897 or the amount of them, or to whom they were paid. But in view of the fact that an accounting was had and made to Angel Gonzalez for the rentals from the year 1897 to December 6, 1910, it is fair to assume that there must have been some kind of a settlement or

accounting between the defendant and the former chaplains of the rentals collected from 1863 to 1897. In any event, the record is conclusive that there was a full, final and complete settlement between the defendant and Angel Gonzalez, as chaplain, for the rentals collected from the year 1897 to December 6, 1910.

Upon this question, the recitals made in the original appointment of Angel Gonzalez, the last chaplain, are very important. After giving the history of the foundation of the chaplaincy founded by Da. Petronila de Guzman, his appointment recites:

> "x x x So that, as such chaplain he may possess and enjoy it as Ecclesiastical benefice and by perpetual title with the obligation of ordering to be said, by means of a priest, while he himself cannot say them sixty masses annually according to the will of the foundress, and with the understanding that every year he has to show to the Court of Chaplaincies wherein this shall be recorded, that he has discharged said masses, without which requiste the rent which for the purpose may be necessary shall be withheld from him. And by virtue of Holy Obedience we order those to whom these presents may concern to have and treat the said D. Angel Gonzalez y Guzman as the beneficiary and possessor of said chaplaincy, and that they pay him well and faithfully the income which in the future the capital may produce and that which it has produced while vacant."

This order was made on August 21, 1901, and remained in full force and effect until Angel Gonzalez resigned, and the final settlement was made with him on December 6, 1910, at which time the

chaplaincy was declared vacant, and it has remained vacant ever since, and Clause Ten of the will provides:

> "It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran."

And Clause Eleven provides:

> "I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain."

That is to say, "the Father President of the College of San Juan de Letran" was made Patron of the chaplaincy, and the executor under the will was made "administartor of the chaplaincy during the minority of said chaplain," D. Esteban de Guzman, who was then a minor less than fourteen years of age.

Hence, we have this situation. On March 13, 1816, Petronila de Guzman made her last will and testament in which she sought to provide for the foundation of a chaplaincy and the celebration of "sixty masses annually" in behalf of her own soul and the souls of her father and mother and brothers and sisters, and in which she named the Father President of the College of San Juan de Letran as Patron of the chaplaincy, and appointed her executor as administrator of the chaplaincy during the minority of her son, D. Esteban de Guzman, whom she appointed the first chaplain, whom she charged and enjoined to carry out the terms and provisions of her will.

Pursuant to that charge and by the terms of the will, the executor made a formal application to the defendant to found the chaplaincy and to have D. Esteban de Guzman, the minor, who was the "legitimate son of my grandson Don José Telesforo de Guzman, appointed as first chaplain under the will, and to provide for the celebration of "sixty masses annually," and the application was formally granted and the chaplaincy was thus founded, and as provided in the will, the minor was appointed as the first chaplain under the chaplaincy, and to that end and for such use and purpose, the property was then conveyed to the defendant in trust. From that date to 1901, four other chaplains have been appointed. In 1863, and for the first time, the defendant took over the actual control and management of the property and collected the rents, and the record is conclusive that from 1897 to December 6, 1910, the defendant accounted to Angel Gonzalez, that last chaplain, for all of such rents and profits, and that in the final settlement, the defendant actually paid to Angel Gonzalez the sum of ₱12,500.00 for and on acount of such rentals and profits.

It will be noted that his order of appointment expressly recites that "he may possess and enjoy it as Ecclesiastical benefice and by perpetual title with the obligation of ordering to be said, by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the foundress," for which he shall duly report, and "without which requisite the rent which for the purpose may

be necessary shall be withheld from him," and that it was further ordered that he should be recognized and treated "as the beneficiary and possessor of said chaplaincy, and that they pay him well and faithfully the income which in the future the capital may produce and that which it has produced while vacant." This is an express recognition of the foundation of the chaplaincy and of its continued existence, and of the right of the chaplain to enjoy it as "ecclesiastical benefice and by perpetual title," and to collect and receive the rents and profits of the chaplaincy not only during its existence, but "while vacant."

Such are the actual facts evidenced by written documents, about which there is not and cannot be any dispute. In addition to which His Grace Michael J. O'Doherty testified:

> "Q. Without reference to your having seen the properties or not, your Grace acknowledges that those properties belong to the chaplaincy in question?
> A. Yes, sir; there is no question about that."

And it appears that upon the foundation of the chaplaincy in the year 1820, it was expressly agreed with the executor of the foundress that any attempt to use the funds of the property in question for any other or different purpose than that provided in the will, no matter how pious it might be, should be considered null and void.

Upon such undisputed evidence, the trial court made an express finding of fact that the defendant

held the title to the property in trust and as trustee under the terms and provisions of the will of the foundress, and that finding is well sustained by the evidence.

We are clearly of the opinion that by the terms and provisions of the will and what has been done under it and through its own actions and conduct covering a period of almost a century, the defendant is now estopped to claim or assert that it has a fee simple title to the property or that it does not hold the title as trustee under the will of the foundress.

* * *

The next and most serious question is whether or not the defendant should be required to account to the plaintiff and the judgment in his favor should be sustained.

As stated, the chaplaincy in question is a colative chaplaincy which required the title of ordination, and it is called ecclesiastical because it is in in the form of an ecclesiastical benefice, and the foundation called for relatives of the foundress whom she designated as a trunk to enjoy the chaplaincy, and hence it is called "colativa familiar."

In the instant case, the trunk of the chaplaincy was D. Esteban de Guzman, the legitimate son of D. José Telesforo de Guzman, who was a grandson of the foundress, who was born on August 4, 1806, who was formally appointed chaplain by the ecclesiastical authorities under the provisions of

the will on the 16th of June, 1820, and at the time of his appointment, he was less than fourteen years of age.

The second chaplain was Vicente de Guzman, also a son of José Telesforo de Guzman, and a brother of the first chaplain, and he was born on November 22, 1816, and was appointed chaplain on April 7, 1838.

The third chaplain was Mariano de Guzman, a son of Juan Bautista de Guzman and the grandson of José Telesforo de Guzman, and he was born on January 20, 1845, and appointed on October 11, 1867.

The fourth chaplain was Fernando Maniquis, a son of Eugenia de Guzman and grandson of Tomasa de Guzman, who was a sister of the first chaplain, Esteban de Guzman, and he was born on May 3, 1870, and was appointed on May 23, 1890.

The fifth and last chaplain was Angel Gonzalez, a son of Escolastica de Guzman and grandson of Tomasa de Guzman, who was a sister of the first chaplain, Esteban de Guzman, and he was born on August 18, 1882, and was appointed on June 20, 1901.

It is stipulated that no one of the five chaplains above mentioned was a "clerigo" at the time of his appointment to the chaplaincy, and also:

> "9. That according to the new canon law promulgated in the year 1918, 'las capellanias o beneficios simples se confieren a clerigos del clero secu-

lar'; that in order to be a 'cerigo' one must have 'prima tonsura'; that in order to have 'prima Tonsura' one must have begun the study of theology; and that in order to study theology one must be a 'bachiller.'

"13. That the plaintiff Raul Rogerio Gonzalez is the legistimate son of said Angel Gonzalez and Adelaida Gonzalez, and was born on September 16, 1912."

It is not alleged, and plaintiff does not claim, that he is now a priest or that he has a "prima tonsura," but it is alleged in the amended complaint:

"I.

"That he is a minor residing in the municipality of Baliwag, province of Bulacan; that he will be 14 years of age on the 16th day of September of the present year (1926); that Adelaida Gonzalez is his mother and duly appointed and authorized guardian ad litem for the purposes of this action and that the defendant is a corporation sole, domiciled in the City of Manila, P. I., and represented by His Grace, M. J. O'Douherty, apostolic archbishop.

"IV.

"That it is provided in the said will that said chaplaincy should be occupied by the nearest relative in succession of the first chaplain, Esteban de Guzman.

"VI.

"That plaintiff is the eldest son of the said Angel and Adelaida Gonzalez, and as such, the nearest relative in succession to the first chaplain, Esteban de Guzman, and the legitimate successor to said chaplaincy; that plaintiff possesses the necessary intelligence, aptitude and spiritual inclination for the career of priesthood; that the testimonials of various Roman Catholic priests as to plaintiff's aptitude and inclination for the priesthood marked Exhibits 'B', 'C', 'D' and 'E' for iden-

tification are hereto attached and made a part of this amended complaint, and that there is no other person who has or claims to have the right to said chaplaincy.

"IX.

"That subsequent to the settlement of accounts set forth in the seventh paragraph of this amended complaint, the defendant in the month of September, 1914, wrongfully obtained and caused to be registered in its own name in the registry of property of the City of Manila, a Torrens title in fee simple to said property free and clear of the trust imposed upon it and upon the defendant as its administrator for the maintenance of said chaplaincy. That a description of the property as thus wrongfully registered marked Exhibit 'F' is hereto attached and made a part of this amended complaint.

"XII.

"That the plaintiff through his parents and attorneys has repeatedly made application to the defendant for appointment to said chaplaincy; that at first no objection was made to plaintiff's right to or fitness for said office, and defendant promised to appoint him, but later refused to do so, alleging at first that he was too young and later declining to state its reasons for such refusal; that the language of the will establishing sail chaplaincy, and particularly the eleventh paragraph thereof, expressly discloses the intention of the foundress to fill said chaplaincy with minors without limitation as to their youthfulness; that Esteban de Guzman, the first chaplain chosen by the foundress Petronila de Guzman, was less than 14 years of age on the date of his appointment by the defendant Archbishop of Manila."

By the stipulation of facts, paragraph 1, 9 and 12 are admitted. Paragraph 4 is contested and disputed. As to paragraph 6, there is no

claim or pretense that any other person has or claims to have a right to the chaplaincy. Neither is it claimed that the plaintiff is not the eldest son of Angel and Adelaida Gonzalez, and there is no dispute as to the contents of Exhibits "B", "C", "D" and "E". But the defendant denies that the plaintiff is "the nearest relative in succession to the first chaplain, Esteban de Guzman, and the legitimate successor to the said chaplaincy," or that he is now spiritually qualified for a career of preisthood.

After an exhaustive analysis of all of the evidence pro and con, the trial court made the following finding of fact:

> "8. So far as the records show, plaintiff is the nearest relative of the first chaplain, Esteban de Guzman. The fourth chaplain, Fernando Maniquis, has a son who is of about the same age and in the same degree of relationship from the first chaplain as the plaintiff, but he is not a candidate for appointment to this chaplaincy, and his father expressly renounced such candidacy in open court while he was testifying as a witness for plaintiff in this case. According to the Archbishop of Manila himself, plaintiff is the only applicant for appointment to the chaplaincy in question. (Deposition, p. 14)"

That finding is sustained by the evidence and is also accepted by the majority opinion.

The evidence is also conclusive that the plaintiff in all things and respects has the intellectual qualifications of a chaplain which specially appears from Exhibits "B", "C", "D" and "E", and the evidence is also conclusive that the plaintiff possesses

even more learning and intelligence than any previous chaplain at the time of his appointment, and that he was personally recommended for the appointment by the Father President of the College of San Juan de Letran, who, under the terms of the will, was the "Patron of said chaplaincy," and that exclusive of the canonical law above quoted, the plaintiff has all of the requisite qualifications of a chaplain, and that if it was not for that law, his appointment would have been simply a matter of form and not of substance. Hence, the question is squarely presented whether the promulgation of the canonical law in question in 1918 is a bar and can now be urged against his appointment as chaplain.

It must be conceded that prior to 1918, there was no law of the church which would prohibit the appointment of the plaintiff as chaplain, and that upon the showing made prior to the promulgation of the law in question, the plaintiff would have been appointed chaplain as a matter of course. It must also be conceded that under the provisions of the existing canonical law, plaintiff does not have the requisite qualifications to be appointed chaplain. The question is thus squarely presented whether after the defendant has accepted and approved the will of the foundress and appointed five different chaplains under its provisions and the conditions then existing, to the last of whom it has accounted for the rents and profits during his chaplaincy, can it now *ex parte* and of its own volition promulgate

and enforce a canonical law which imposes new and different terms and conditions and in legal effect nullifies the will of the foundress, which it has recognized and enforced for nearly a century? Whatever may have been the rights, privileges and prerogatives of the church while this country was under the dominion of Spain, it was held by this Court in U. S. *vs.* Balcorta, 25 Phil., 273, 276, that:

> "The change of sovereignty and the enactment of the fourteenth paragraph of section 5 of the Philippine Bill caused the complete separation of church and state, and the abolition of all special privileges and all restrictions theretofore conferred or imposed upon any particular religious sect."

The Constitution of the United States prohibits the passing of an *ex post facto* law or of any law impairing the obligation of contracts.

In the celebrated case of The Trustees of Dartmouth College v. Woodward, 4 Law Ed. (U. S.) p. 629, in an opinion written by Chief Justice Marshall, the Supreme Court of the United States held:

> "The charter granted by the British crown to the trustees of Dartmouth College, in New Hampshire, in the year 1769, is a contract within the meaning of that clause of the constitution of the United States, art. 1, s. 10, which declares that no state shall make any law impairing the obligation of contracts. The charter was not dissolved by the revolution.
>
> "An act of the state legislature of New Hampshire, altering the charter, without the consent of the corporation, in a material respect, is an act impairing the obligation of the charter, and is unconstitutional and void.

"Under its charter, Dartmouth College was a private and not a public corporation. That a corporation is established for purposes of general charity, or for education generally, does not, *per se*, make it a public corporation, liable to the control of the legislature."

Commenting on this decision, Chancellor Kent, Vol. 1, p. 418, said:

"The argument of the Supreme Court in this celebrated case contains one of the most full and elaborate expositions of the constitutional sanctity of contracts to be met with in any of the reports. 'The decision in this case did more than any other single act, proceeding from the authority of the United States, to throw an impregnable barrier around all rights and franchises derived from the grant of the government; and to give solidity and inviolability to the literary, charitable, religious commercial institutions of our country.' "

Since the rendition of that decision, no court of last resort, under the jurisdiction of the United States Flag, has ever declared any law valid, either legislative or canonical, that impaired the obligation of a contract.

In substance, both of those provisions in the Constitution of the United Sates are incorporated in, and made a part of, the Organic Law of the Philippine Islands.

Upon this question, the mejority opinion says:

"It is undeniable that under Spanish law an ecclesiastical canon such as we are now considering could have been adopted regardless of its effect upon the foundation or the persons interested therein, and it cannot be admitted that an obligation

> which could be changed under Spanish law has become immutable from the promulgation by Congress of the constitutional provision forbidding the impairment of contracts by legislative Acts."

That is to say, because in 1918 there was no law in Spain against impairing the obligation of a contract, the defendant then had the legal right to promulgate a canonical law which did impair the obligaton of a contrat. Therein lies the fallacy of the majority opinion. It overlooks the underlying, fundamental fact that in 1918, and for a long time previous, this country was no longer under the dominion of Spain, and that it was then under the laws of the United States in which neither the Church nor State can enact a law which will impair the obligation of a contract.

That statement is not good law, and is direct conflict with, and overlooks the provision of, Article 3 of the Civil Code which says that:

> "Laws shall not have a retroactive effect unless therein otherwise provided."

That is to say, the Federal Constitution prohibits the law-making power from passing any law which impairs the obligation of a contract, and the Spanish code expressly provides that no law shall have a retroactive effect "unless therein otherwise provided." If the Legislature cannot enact a law which would impair the obligation of a contract, how, in what manner and by what authority can the defendant promulgate a canonical law which in legal effect impairs the obligation of a contract?

Even under the Spanish code, how and in what manner and by what authority can a canonical law be made retroactive unless the canonical law also provides that it shall be retroactive? Upon what legal principle is the defendant church exempt from the express language of the Constitution, or the plain provisions of the statute? It must be conceded that such provisions are binding upon private persons and the legislative bodies of the government; hence, why are not they binding upon the defendant? And why is it exempt? The execution of the will by the foundress and the acceptance of its terms and conditions by the defendant and the conveyance to it of the property and the appointment of the chaplain specified in the will and of four other chaplains in accord with its terms and provisions, covering almost a century of time, and the admitted accounting to the last chaplain, makes a valid, binding, executed contract between the foundress and the defendant. Otherwise, the whole transaction from its inception was null and void and of no legal force or effect.

The deed of endowment recites that the expense of the construction of the "house of lime and stone" was ₱1,600.00, exclusive of the value of the lot on which it was situated, and that the rental value of the house on April 26, 1820, was ₱180.00 per annum. It appears that its rental value at present is ₱1,000.00 per month, and that the amount of the rents and profts from December 6,

1910, to the rendition of the judgment on December 20, 1926, is ₱173,725.00, less certain enumerated costs and expenses, from which the importance of this case becomes very apparent.

The defendant vigorously contends that the property in question became and is now spiritual property, and that as such it is beyond the jurisdiction of the courts. Here, again, we must look to the purpose and intent of the foundress and what has been done by the defendant under the terms and provisions of the will. The building was constructed at a cost of ₱1,600.00, and at the time of the execution of the will, it had a rental value of ₱180.00 per annum. The chaplaincy was founded and provision was made for the saying of sixty masses annually, for which the ₱180.00 annual rent was then deemed sufficient. In its acceptance of 1820, the defendant approved "the foundation of the chaplaincy, etc., as well as the imposition (charge) of seventeen hundred pesos against said building, converting said sum into spiritual property of a perpetual character, etc.," and it was to that extent, and to that extent only, that the property was spiritualized. It was never the purpose or intent of the foundress that it should be spiritualized above and beyond the amount of the specified rental value at the time of the execution of the will. By the acceptance of the deed of endowment upon the terms and conditions stated, and the founding of the chaplaincy, the defendant declared itself satisfied with

the ₱180.00 per annum as a full and complete compensation for the saying of the sixty annual masses, and for nearly a century, it has taken and accepted that compensation in full for those services, and it account to the last chaplain for the amount of such rents and profits less costs and expenses, and the amount of such annual masses. Those facts alone are conclusive evidence that the defendant by its own actions and conduct is now estopped to claim or assert that the property in question was spiritualized above and beyond the original amount of ₱180.00 per annum. Such a contruction is also in accord with, and gives full force and effect to, the deed of the foundation in which it is said that:

> "Property is segregated from temporal properties and transferred to the spiritual properties of this Archbishopric, without its being possible to alienate or convert the property as such into any other estate for any cause, even though it be of a more pious character, protesting that if the contrary should be done from now until then, he (the executor) declares null and without value or effect what ever may be done or executed contrary to the tenor of these presents,"

which immediately follow the words "the rents of the property of which amount at present to ₱180.00 per year, be declared sufficient, issuing the corresponding title of chaplain to his said son."

It is conceded that in September, 1914, the defendant made an application to have the property registered in its own name and to obtain a Torrens

title, and that in truth and in fact it did obtain and now holds a Torrens title in fee simple in its own name, and for aught that appears upon the official record, the defendant is the sole and exclusive owner of the property in its own right and name.

It is also conceded that at all times since December 6, 1910, the chaplaincy has been and is now vacant, and that the defendant has refused to appoint the plaintiff as chaplain or to account to him for the rents and profits, and that, if the canonical law of 1918 is to he applied and should be enforced, the plaintiff does not have the requisite qualifications under the existing laws of the church to be appointed chaplain.

Among other things, the purpose of this action is to compel the defendant to appoint the plaintiff to the vacant chaplaincy, and upon that point the lower court sustained the plaintiff's contention. We frankly concede that the court should not interfere with the internal affairs of the church upon any question of religion or any matter of spiritual nature. That is a constitutional right which is expressly reserved to the church. Even so, when a church enters into a valid and binding contract which involves temporal and property rights, the construction and legal force of such a contrract devolves exclusively upon the courts, and while they do not claim or exercise the power to interfere with the spiritual matters of the church, they do claim

and exercise the power over the property rights of the church and any right arising from, or growing out of, a valid and binding contract over property to which the church is a party.

We frankly concede that the courts do not exercise or claim the power to say to the church whom it should or should not appoint chaplain, to perform any spiritual right or duty, or in the least to interfere with the spiritual affairs of the church, its creed and religious belief, or the spiritual duties of any officer or member of the church. But the question involved in this case is one of a property right founded upon a contract made between the church and the foundress and the purpose of this action is not to procure the appointment of a chaplain with authority under the laws of the church to say the masses, for which the will provides, or in any manner to interfere with the spiritual affairs of the church. The sole purpose is to have a chaplain appointed with legal authority to receive and receipt for the net income of the property.

If, as the defendants contends, it has the sole and erclusive right at its option and in its discretion to change, modify or enlarge the requisite qualifications for a chaplain, and the sole and exclusive power in its own discretion to appoint a chaplain, it is fair to assume that in the instant case, no chaplain would ever be appointed and that no accounting would ever be made, for the simple reason that in no circunstances would any church

or any other person want to appoint a chaplain to whom, when appointed, it would be required to make an accounting of the rents and profits of the property, as in the instant case, covering a period of seventeen years, the rental value of which is now ₱1,000.00 per month, and that would be especially true where the chaplaincy has been vacant seventeen years. If that is the law, the defendant would have the power at its option and in its own discretion to impose new terms and conditions for the appointment of a chaplain, with which no member of the Guzman family could ever comply, and thus defeat and prevent the appointment of any chaplain at any time in the future. That is not the law; neither should the original contract be so construed.

The chaplaincy has been vacant for the last seventeen years, and if, under the existing canonical law, the defendant has the sole and exclusive power to appoint and the appointee must be a "clerigo" with all of the necessary qualifications, the question naturally arises who, if any one, will ever be appointed chaplain, and when, if ever, would he be appointed? The stubborn fact remains that it has been vacant for the last seventeen years, and that under the existing canonical law, no member of the Guzman family would ever be appointed chaplain.

Upon this question, in its brief, appellant says:

> "For argument's sake, we shall admit that plaintiff has a right to the income of the chaplain-

cy and that the same is a civil right. Such a right, however, would depend on whether plaintiff is appointed chaplain of the said chaplaincy."

In response to which, respondent says:

"I admit that you are the owner of the sum of over ₱150,000.00 which I have collected as rents of the property of the chaplaincy, but you can only take and enjoy it if I give you the key, which I do not propose to do."

And

"That its refusal give the plaintiff that key is a judicial decision final and conclusive against plaintiff's right to recover that money."

That is a statement of the whole case in a nutshell.

Previous to the promulgation of the canon law of 1918, any male descendant of the first chaplain over thirteen years of age was eligible to the position, and the will provides that for the failure of such descendant, a student of San Juan de Letran School shoud be appointed. Yet, that is nothing more than a high school, or one of secondary education, and there is no claim or pretense that any of its students is a "clerigo" or possesses the necessary qualifications to be appointed chaplain under the canon law of 1918. That is to say, if that law is to be enforced, the provisions of the will for the appointment of a chaplain which were then valid under the laws of the church are wholly nullified, and for such reason, the chaplaincy would remain forever vacant, against the clear intention and the express will of the foundress. By that cons-

truction and defendant's course of conduct, there is no longer any beneficiary under the will of the foundress, for the simple reason that there is no person to whom the defendant should account. It is elementary that you cannot have a trust without a beneficiary. Under all of the definitions of an express trust, there must be a trustee who holds the legal title to the property for the use and benefit of some third person; otherwise, it is not a trust. Having accepted the trust and having recognized it and performed the duties of trustee for nearly a century, the defendant cannot now defeat or impair the trust by neglecting or refusing to appoint a beneficiary to whom it should account for the net income of the property.

It appears by its own evidence that the defendant has been using the funds arising from the rents and profits "for religious purposes, aducation, benefices, charity, etc.," and "I have done nothing more than follow the custom which I found had been followed by my predecessor Mons. Harty." In addition to which, under the Torrens System, it has applied for and obtained a title in fee simple in its own name. If the will is to be so construed, then by and through the actions and conduct of the defendant, it becomes void for want of a beneficiary.

That question was squarely decided in an exhaustive opinion by the Supreme Court of New Hampshire, April 6, 1926, 45 A. L. R., p. 1433;

in which, among other things, the syllabus says:

"*Wills*, Sec. 201—*requisites of bequest.*

"2. To create a valid bequest there must be a beneficiary, or class of beneficiaries, indicated in the will, capable of coming into court and claiming the benefit of the bequest.

"(See 28 R. C. L. 339; 3 R. C. L. Supp. 1572.)

"*Trust*, Sec. 21—*necessity of definite beneficiary.*

"3. To effect an enforceable private trust by will there must be a beneficiary, or class of beneficiaries, indicated in the will, capable of coming into court and claiming the benefit of the bequest.

"(See 26 R. C. L. 1189; 4 R. C. L. Supp. 1701; 5 R. C. L. Supp. 1444.)

"*Trusts*, Sec. 20—*indefiniteness—effect.*

"5. A gift to trustee to dispose of the same as they think fit is too uncertain to be carried out by the courts.

"(See 26 R. C. L. 1184.)

"*Wills*, Sec. 198—*ascertainment of beneficiaries.*

"9. The identity of a beneficiary in a will is a question of fact to be found from the language of the will, construed in the light of all the competent evidence, rather than by the application of arbitrary rules of law.

"*Trusts*, Sec. 21.—*designation of beneficiaries.*

"10. Beneficiaries under a trust may be designated by class.

"*Trust*, Sec. 44—*failure—effect.*

"12. Where a gift is impressed with a trust, ineffectively declared, and incapable of taking effect because of the indefiniteness of the cestui que trust, the donee will hold the property in trust for the next taker under the

will, or for the next of kin by way of a resulting trust. "(See 26 R. C. L. 1216; 5 R. C. L. Supp. 1446.)"

That same legal principle is laid down by the Supreme Court of Alabama in Festorazzi v. St. Joseph Roman Cotholic Church 25 L. R. A, 360, 362 and 363, and by the Supreme Court of Wisconsin in McHugh v. McCole, 72 N. W. 630, 632, 634-637. In legal effect, those decisious support the contention of the plaintiff that, if the appointment of a chaplain is a matter which is left to the sole discretion of the defendant, it must follow that in the instant case, the beneficiary is not made definite and certain, and that the foundation is void for want of any person who is qualified to enforce it, and, for such reason the legal title to the property must revert to, and become vested in, the heirs of the foundress.

If the contention of the defendant is to prevail in the instant case, the very fact that the chaplaincy has been vacant for the last seventeen years, and that no member of the Guzman family or student of the San Juan de Letran College is qualified to fill the position under the canonical law of 1918, and that under such conditions, a chaplain may never be appointed under the provision of the will in the future, would leave the whole question in the realm of doubt, uncertainty and speculation as to when if ever there would be a beneficiary under the will of the foundress. If

there ever was any doubt as to how the deed of the foundation should be construed, it has been forever removed by the course of conduct and the long, continuous construction which has been placed upon it by all of the parties in interest, including the legal descendants of the foundress and the defendant, in particular, in the appointment of the five previous chaplains, the manner of their appointment, and the terms and conditions upon which they were appointed, the conduct of the defendant, and the accounting which it made to the last chaplain. All of such parties by their actions and conduct, having approved and followed that construction for nearly a century, cannot at this time contend for any other or different construction, in particular, where the contention would defeat and destroy the will of the foundress.

This case is one of the first impression in this Court, and we doubt very much whether a similar case has ever been decided by any court. On page 17, the majority opinion says:

> "It is a sinister omen for the plaintiff's case that no decision of any civil court whatever can be pointed to as a precedent for such an exercise of judicial power, and the mere novelty of the proposition is an argument against the soundness of the plaintiff's case."

Our answer is that each case is decided upon its own facts, and that no case will ever be found with the same peculiar facts shown to exist in the record, and it is for that reason that no case

can be found either pro or con upon this particular question.

Be that as it may, the primary purpose of this action is to obtain an accounting, for which the appointment of a chaplain is only an incident and not one of substance, and, as stated, it is not sought to have a chaplain appointed for the saying of masses. We frankly concede that is a matter peculiarly within the province of the defendant and over which this Court does not have any control. The purpose here is confined and limited to the appointment of a chaplain for administrative purposes only, to whom the defendant should account for the net income of the property. Therein lies the distinction. In other words, the plaintiff seeks to have a chaplain appointed for the sole and specific purpose of carrying out the will of the foundress and to comply with the legal obligation arising out of the original contract.

The majority opinion suggests that the proper remedy, if any, would be an independent action "brought as a class suit in behalf of all the descendants of Duña Petronila de Guzman, since under the present decision the minor plaintiff in this action has no particular title to relief."

The plaintiff here is a son of the last chaplain, Angel Gonzalez, who is a son of Escolastica de Guzman, and grandson of Tomasa de Guzman, who was a sister of the first chaplain, Esteban de

Guzman, and this action is prosecuted by Adelaida Gonzalaz, who is the wife of Angel Gonzalez, the former chaplain and the mother of the plaintiff. It also appears that Fernando Maniquis, who was the fourth chaplain, is a son of Eugenia de Guzman and the grandson of Tomasa de Gnzman, who was a sister of the first chaplain, Esteban de Guzman, and who appeared and testified as a witness for the plaintiff, and in open court waived any right that his minor son might have to be appointed chaplain. In other words, it appears from the record that a number of the immediate descendant of the foundress appeared in court and testified as witnesses on behalf of the plaintiff, and not one of them appeared to contest his claim from the date of the filing of the original complaint on August 5, 1924, and there is no claim or pretense that any descendant of the foundress is contesting plaintiff's right to prosecute this action or to be appointed chaplain.

Even from that point of view, under the allegations of the amended complaint and its broad prayer for relief, there is much force in the contention that the instant case could be construed as "a class-suit in behalf of all of the descendants of Doña Petronila de Guzman."

There is no dispute about any material fact, and in the final analysis, the only questions involved are those of law and as to how they should be construed and applied to the undisputed facts,

and those questions are of vast importance to both the litigants, the profession and the public in general, and in the orderly administration of justice, they should be squarely met and decided as they now appear in this record.

If, under the law, the defendant should be required to make an accounting, it would not make any legal difference to it whether such an accounting should be made in this action or in the so-called "class-suit." This proceeding being equitable in its nature, if the judgment of the lower court in favor of the plaintiff should be affirmed, it would have full and ample power to protect the legal rights of all parties having or claiming an interest in the fund, by reason of which and upon the facts in the record, the judgment would be a legal bar to any other action against the defendant. In that situation and in the interest of justice, it is the duty of this Court to decide this case on its merits.

We are clearly of the opinion that the defendant holds the legal title to the property in trust and that under the terms and provisions of the will of the foundress, it should make an accounting of the net income from its rents and profits, the receipt of which it admits, and that whether this action should be construed as prosecuted by the plaintiff under his right to be appointed chaplain for administrative purposes or in the nature of a "class-suit," the judgment of the lower court

should be affirmed, and for such reasons, I dissent from the learned and well written majority opinion.

CHARLES A. JOHNS.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
In the Supreme Court of the Philippine Islands

RAUL ROGERIO GONZALEZ BY HIS GUARDIAN AD LITEM, ADELAIDA GONZALEZ,
Plaintiff and Appellee,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,
Defendant and Appellant.

G. R. No. 27619.

MOTION FOR REHEARING

COMES NOW the plaintiff, by his undersigned attorneys, and respectfully moves the Court for a rehearing and reconsideration of the decision in the above entitled action for all the reasons set forth in the dissenting opinion of Justice Johns; because of the finding in the concurring opinion of Justice Malcolm in substance that the defendant has violated the trust agreement by obtaining a fee simple Torrens title to the property of the chaplaincy, by using its revenue for educational purposes, and by keeping the chaplaincy

indefinitely vacant and in the meantime appropriating the rental of the property of the chaplaincy; and for the following additional reasons:

(1)—Because of the erroneous retroactive application of the ecclesiastical canon of 1918 to the qualifications required of the plaintiff as a candidate for the chaplaincy, in violation of Art. 3 of the Civil Code.

ARGUMENT

The majority, concurring and dissenting opinions, are in accord upon the proposition that the plaintiff is the only applicant and lawful heir to the vacant chaplaincy under the terms of the will of the foundress; that his qualifications conform to the requirements of the ecclesiastical laws and regulations in force from the time of the execution of the will and the execution and acceptance of the deed of endowment until the promulgation of the canon of 1918, and that the plaintiff's qualifications are equal, if not superior, to those of all the preceding chaplains, none of whom were clerigos.

(2)—Because the rotrospective application of the ecclesiatical law or canon of 1918 to the will of the foundress and to the deed fo endowment is in violation of section 3 of the Act of Congress of August 29, 1916, popularly known as the Jones Law and the Constitution of the United States, in that it impairs the obligation of the contract consisting of the execution and acceptance of the deed of en-

dowment, and deprives the plaintiff as the heir to the chaplaincy of a vested right to the income of the chaplaincy property without due process of law.

(3)—Because of the erroneous assumption by the Court that the defendant had or has any discretion to refuse the appointment of the plaintiff in face of the undisputed fact that he is the rightful heir and only claimant to the chaplaincy and possesss all the qualifications required by the ecclesiastical laws and regulations in force previous to the promulgation of the canon of 1918, and in face of the undisputed fact that the defendant in violation of the terms of the trust had laid claim to the absolute ownership of the trust property and had misappropriated its rents.

ARGUMENT

The defendant, in violation of the terms of the trust, having obtained a fee simple Torrens title to the trust property in its own name and having misappropriated the rents of the property since the year 1910, and having alleged absolute ownership of the property in its defense to the present action, thereby setting up a claim to the trust property hostile to the interest of the plaintiff as beneficiary, incapacitated itself to exercise any discretion to refuse the appointment of the plaintiff.

Even had the defendant not disqualified itself to act by its violation of the trust, it could

not have lawfully refused the appointment of the plaintiff due to his admitted heirship, qualifications and nomination by the patron, and because of the property rights involved.

(4)—Because of the erroneous omission of the Court to clearly interpret the will of the foundress and the deed of endowment for the purpose of defining the rights and duties of the defendant as administrator of the property and the rights of the plaintiff and other heirs to such chaplaincy.

(5)—Because of the erroneous failure of the Court to order and accounting by the defendant of the rents of the property collected by it as administrator.

ARGUMENT

One of the principal objects of the action was to obtain an interpretation of the will and deed of endowment which would define the rights and obligations of the defendant as administrator, and the rights of the plaintiff and his successors as heirs to the chaplaincy and to obtain an accounting by the defendant of the rents of the property.

The right of any party in interest to maintain an action for such an intrepretation and for such an accounting has, we beleive, never been denied by any court of last resort. While in the opinion of the undersigned the terms of the will and deed of endowment are perfectly clear, nevertheless the fact that the defendant, in violation of those same terms of the will and deed of endow-

ment, claims absolute title to the trust property and the right to divert its rents to purposes other than those specified, furnishes ample grounds for invoking the interpretation prayed for in the complaint.

By reason of the plaintiff and other prospective heirs being deprived of the income of the chaplaincy property, it is particularly unfortunate to impose upon them the necessity of bringing another action for the determination of the questions which might be decided in this case.

(6)—Because there is no competent proof in the record to support the finding of this Honorable Court that the obligation to say sixty masses per year has been performed by the present Archbishop (see p. 7-10, inclusive, deposition of Archbishop).

(7)—Because there is no competent evidence to support the finding of this Honorable Court that the Archbishop offered at his expense to educate the plaintiff.

(8)—Because the finding that Father Prieto, the patron under the will, testified that he left the matter of plaintiff's moral or intellectual qualifications to his superior, is entirely without foundation in the record.

(9)—Because the Court erroneously found that the defendant recognizes the trust imposed upon the property by the terms of the deed of endowment.

ARGUMENT

Counsel for the Archbishop claim absolute ownership on behalf of the defendant of the property free of any trust, and it is unfair to the plaintiff to credit defendant with recognizing the trust, because one of the strongest reasons of the plaintiff for denying the right of the Pope and Archbishop to issue and apply retroactively the canon of 1918 raising the qualifications of heirs to chaplaincies is the fact that the defendant has wrongfully obtained an absolute Torrens title to the chaplaincy property, has refused to appoint plaintiff or any other heirs to fill the vacancy, and has used the rents for purposes other than those stipulated in the deed of endowment, and because to allow the Pope and Archbishop to raise the qualifications of the heirs while claiming ownership of the property would be to permit them to legislate and to act as judges in a matter in which they are interested as parties.

WHEREFORE, plaintiff prays that a rehearing be granted, that the Court's decision of February 4, 1928 be reconsidered and set aside, and that the judgment of the trial court be affirmed.

Manila, P. I., February 14, 1928.

Respectfully submitted,

GIBBS & McDONOUGH,
By A. D. GIBBS
Attorneys for Appellee,
Peoples Bank Bldg., Manila.

On February 16, 1928, the following order

overrulling the motion for rehearing was entered:

"Considering the motion of the attorneys for the appellee in case R. G. No. 27619, Raul Rogerio Gonzalez, etc. vs. The Roman Catholic Archbishop of Manila, praying, for the reasons given, that the decision of this Court of February 4, 1928, be reconsidered and set aside and that the judgment of the trial court be affirmed, the Court, sitting In Banc, DENIED THE MOTION. Mr. Justice Johns dissented. Messrs. Justices Johnson, and Romualdez took no part."

On February 18, 1928, the following final judgment was entered:

UNITED STATES OF AMERICA
In the Supreme Court of the Philippine Islands

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ, Plaintiff and appellee, versus THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, Defendant-appellant.	JUDGMENT February 18, 1928. File No. 27619.

The Court having regulaly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision after consideration thereof by the Court upon the record, its deci-

sion and order for judgment having been filed on the 4th day of February, A. D. nineteen hundred and twenty-eight;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 20th day of December, nineteen hundred and twenty-six, and from which the avobe-entitled appeal was taken, be, and the same is hereby reversed and the defendant, the Roman Catholic Archbishop of Manila, is absolved from the complaint, without prejudice to the right of proper persons in interest to proceed for independent relief in either of the directions stated in the opinion of the Court, without express prononcement as to costs.

It is further ordered that * * * recover from * * ** the sum of* *, as costs.

(SGD.) V. ALBERT
Clerk of the Supreme Court of the
Philippine Islands.

On February 20, 1928, counsel for the plaintiff excepted to the order overruling their motion for rehearing and reconsideration, as well as to the final judgment entered, and gave notice of their intention to apply to the Supreme Court of the United States for a writ of certiorari for the review of said judgment, and prayed for the stay of execution.

On February 23, 1928, the Supreme Court ordered that the exception be noted and fixed at ₱1,000.00 the amount of the supersedeas bond.

On March 3 1928, the plaintiff filed with the Clerk's Office a supersedeas bond in the amount of ₱1,000.00 which was duly approved by Associate Justice George A. Malcolm.

UNITED STATES OF AMERICA
In the Supreme Court of the Philippine Islands

I, V. ALBERT, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing three hundred ninety-nine (399) printed pages contain a true and correct translation and transcript of the record of the case entitled Raul Rogerio Gonzalez, by his guardian ad litem, Adelaida Gonzalez, Plaintiff and Appellee, *vs.* The Roman Catholic Archbishop of Manila, defendant and appellant, bearing No. 27619 of the General Register of this Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this second day of May, A. D., nineteen hundred and twenty-eight.

V. ALBERT
Clerk, Supreme Court of the
Philippine Islands.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 15, 1928

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4465)

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JAN 15
CHARLES ELMOR

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] 6

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,
Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILLIPINE ISLANDS.

MOTION FOR SUBSTITUTION.

Now comes the Petitioner above named and suggests and represents to the Court that on November 23rd, 1928, his guardian *ad litem* Adelaida Gonzalez died in the City of Manila and that thereafter such proceedings were had in the Court of First Instance of the City of Manila, having jurisdiction in the premises, that Leon Gonzalez was duly appointed guardian *ad litem* for Petitioner. A certified copy of the Order making such appointment was mailed from the City of Manila on December 15th, 1928, and will be filed with the Clerk of this Court when received.

WHEREFORE Petitioner moves that said Leon Gonzalez be substituted as his guardian *ad litem* in this cause in this

Court and that the title of this cause and the proceedings herein be amended accordingly.

Dated January 16, 1929.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
ALLISON D. GIBBS,
Counsel for Petitioner,
No. 2 Rector Street,
New York City, New York.

Due service of a copy of foregoing motion to be submitted on January 16, 1929, is hereby admitted.

Counsel for Respondent.

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FILED
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CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted]6

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,

Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND BRIEF IN SUPPORT THEREOF.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
ALLISON D. GIBBS,
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Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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Supreme Court of the United States

OCTOBER TERM, 1928.

No.....

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,
Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

PETITION FOR WRIT OF CERTIORARI.

May it please the Court:

The petition of Raul Rogerio Gonzalez, by his Guardian *ad litem* Adelaida Gonzalez, respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

This is an application for a writ of certiorari to review a final judgment of the Supreme Court of the Philippine Islands, entered on February 18th, 1928 (R., pp. 397, 398), upon the denial of a petition for rehearing (R., p. 397), reversing by a divided Court a judgment of the Court of First Instance of Manila (R., pp. 293, 294) in favor of the present petitioner (plaintiff below), requiring the respond-

ent (defendant below) to pay to plaintiff the sum of 173,725 Pesos ($86,862.50 American currency), representing the income from 1911 to 1925 of a certain Foundation for a Chaplaincy, established by the Will of plaintiff's ancestress and the deed of her executor, and to appoint plaintiff to such Chaplaincy in accordance with the Will of the Foundress. Upon such reversal the Philippine Supreme Court directed a dismissal of the complaint (R., p. 398).

The facts out of which the controversy arises will be stated as briefly as their complicated nature permits.

In 1816 Doña Petronila de Guzman made a Will in which she directed her executor to constitute certain real property into a collative chaplaincy, the foundation thereof to be effected immediately after her death. She designated her great grandson Don Esteban de Guzman to be the first chaplain "and in his default, the nearest relative, and in default of the latter, a collegian of San Juan de Letran who should be an orphan *mestizo* native of this said Town" (R., pp. 60-62, 317). She requested the Chaplain to celebrate sixty masses annually for the souls of testatrix and of certain of her relatives. She designated the President of the College of San Juan de Letran to be patron of the Chaplaincy, and appointed her Executor (her grandson, and father of the designated Chaplain) to be administrator of the Chaplaincy during the minority of the Chaplain, who was still under age when the testatrix died (R., p. 320). In 1820, after her death, her Executor by appropriate formal instruments, with the approval of the *Promotor Fiscal*, transferred the property

> "to the spiritual properties of this Archbishopric, with the restriction that, as a spiritual property, it cannot be alienated or converted into any other

estate for any cause, even though of a more pious character, (the grantor) protesting that if the contrary should be done from now until then, he declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents" (R., pp. 318-320).

The then Archbishop found the endowment sufficient for the support of the Chaplain and approved the Foundation, and the Chaplain designated by the testatrix was appointed and served as such (R., pp. 42-58, 321). At the time of his appointment he was thirteen years old (R., pp. 35, 322). He was succeeded from time to time by four other descendants of the Foundress, the latest of whom, Angel Gonzalez, the Father of the petitioner, was appointed in 1901, and served until December 6th, 1910, when he resigned. Since that date the Chaplaincy has been vacant (R., pp. 35-36).

At the time of the institution of the Chaplaincy the annual income of the property of the Foundation was 180 Pesos (R., p. 50). This has increased in present times to well over 12000 Pesos per year (R., pp. 90, 91). The present cost of having sixty masses said per year by some one other than the Chaplain, when the Chaplaincy is vacant, or the incumbent is not a duly ordained and qualified priest, is not over 300 Pesos (R., p. 323) per year, so that the present net income of the Foundation, which the Foundress so clearly intended should always be enjoyed by some one of her blood, is fully 12000 Pesos per year.

After the resignation of Angel Gonzalez as Chaplain in 1910 there was an accounting and settlement of the income of the Chaplaincy to the end of that year, and since that time the Chaplaincy has been vacant and the income

has been applied by the defendant to other purposes (R., pp. 112, 324). The defendant has also caused the property to be registered in his own name and official capacity by a Torrens title f e of any trust (R., pp. 67, 68).

The plaintiff, who is the eldest son of Angel Gonzalez, the last Chaplain, and the nearest relative in succession to the first Chaplain and to the Foundress, applied for appointment as Chaplain. By a letter of February 25, 1922 (Exh. B, R., pp. 58, 59), the President of the College of San Juan de Letran, the Patron of the Chaplaincy under the Will of the Foundress, presented plaintiff to the Archbishop for such appointment, certifying that he was the heir to the Chaplaincy. By letter dated March 20th, 1922, addressed to plaintiff's Father, the Archbishop rejected the application upon the ground that under the Code of Canon Law promulgated in 1918 certain ecclesiastical qualifications were required for the office of Chaplain, which were not possessed by plaintiff (Exh. C., R., pp. 59, 60). Prior to 1918 the only relevant requirement was one of age, which was met by plaintiff at or before the time of the trial of the cause (R., p. 328). As indicated in the concurring opinion of Mr. Justice Malcolm in the Court below (R., p. 347):

> "Broadly speaking, Raul Rogerio Gonzalez met the requirements of the Church before the Canon Law of 1918 went into effect."

By the *Codex Juris Canonici* promulgated by the Pope in 1918, it was provided (R., pp. 346, 347):

> "The Chaplaincies or simple benefices are conferred on clericals of the secular clergy."

Under this canon, in order to be a "clerical", one must have the "first tonsure"; have begun the study of theology and be a "bachiller" (R., p. 36). This term is defined in Alcubilla's Diccionario (Vol. 1, p. 972), as meaning the first Academic Degree. The plaintiff does not possess these qualifications, but it is undisputed that no one of the five previous incumbents of the benefice was a "clerical" or "clerigo" and also that plaintiff possesses "more learning and intelligence than any previous Chaplain at the time of his appointment" (R., p. 373). The question is thus squarely presented whether the Canon of 1918 is effective to bar plaintiff's appointment and also to authorize the Archbishop to divert the income of the Foundation to purposes not contemplated by the Foundress. It is to be noted that from the time of the foundation of the Chaplaincy the successive incumbents of the benefice were not at the time of their respective appointments qualified to say the masses provided for by the Foundress, and that it was prescribed in 1901 in respect to the last preceding incumbent that he should be under the "obligation of ordering to be said by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the Foundress" (R., p. 323).

None of the previous Chaplains was a "clerigo" at the time of his appointment (R., p. 36), and it does not appear that any ever became a priest. It was established that the plaintiff was the nearest surviving relative of the Foundress and of the first Chaplain, and that no other relative made any claim to the Chaplaincy (R., pp. 327, 328, 372).

The Foundress and her executor manifestly contemplated the following as the objects to be attained by the establishment of the Chaplaincy:

1. That its emoluments should be enjoyed by her nearest surviving relative, so long as there might be one available, and in default of such relative by a student of a particular description of the College of St. Juan de Letran.

2. That sixty masses a year for the repose of her soul, and of the souls of certain of her family, should be said by the Chaplain, if qualified, and if not by some qualified priest at the expense of the income of the Foundation.

3. That neither the property nor the income should ever be diverted to any other purpose.

The reversal by the Philippine Supreme Court of the judgment in favor of plaintiff rendered by the Court of First Instance leaves the defendant free to proceed with this diversion of trust funds which has continued for the past eighteen years, unless some other and different proceedings shall be brought against him by a class which would necessarily include plaintiff, and upon the same facts which appear in the present Record.

B.

Reasons Relied on for the Allowance of the Writ.

1. The Philippine Supreme Court in this case has decided an important question of both local and general law upon which there is no controlling prior decision of this or any other American Court, and which it is important should be settled by a decision of this Court.

2. The Philippine Supreme Court in this case has decided an important question of general law in a way which, it is submitted, is untenable and is in conflict with the weight of authority on analogous questions.

3. The Philippine Supreme Court in this case has rendered a decision which permits the radical changes in the Canon Law made in 1918 to operate retroactively in the Philippine Islands, in such a way as to divest long vested rights of property, to defeat the testamentary intentions and directions of the Foundress of a benefice, and to divert the income of the Foundation to purposes not contemplated by her, all contrary to the Organic Law of the Islands, the Treaty of 1898 with Spain and the Constitution of the United States.

4. By the decision sought to be reviewed, a fiduciary is permitted, by a change in its internal law and by its own interpretation and application thereof, to apply to its own use the income of a Foundation created for another specific purpose.

WHEREFORE your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the Philippine Islands, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the Record and all proceedings in the case numbered and entitled on its docket "G. R. No. 27619, Raul Rogerio Gonzalez, by his guardian *ad litem* Adelaida Gonzalez, Plaintiff and Appellee, *vs.* The Roman Catholic Arch-

bishop of Manila, Defendant and Appellant," and that the said judgment of said Supreme Court of the Philippine Islands may be reversed by this Honorable Court, and that your Petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your Petitioner will ever pray.

RAUL ROGERIO GONZALEZ,

By his Guardian *ad Litem*
Adelaida Gonzalez,
Petitioner.

By FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
ALLISON D. GIBBS,
Counsel for Petitioner,
2 Rector Street,
New York City, N. Y.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1928.

No.....

RAUL ROGERIO GONZALEZ, by his Guardian *ad Litem*, Adelaida Gonzalez,
Petitioner,

vs.

THE ROMAN ARCHBISHOP OF MANILA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The Opinion in the Court of First Instance of Manila is not reported. It was rendered on December 20th, 1926, and will be found in the Record at pp. 230-294. The Opinions in the Philippine Supreme Court (two judges not sitting) have not yet appeared in the Philippine Reports received in this country. They were rendered on February 4, 1928, and will be found in the Record as follows:

Opinion of the Court by Street, J., at pp. 315-341;

Concurring opinion by Malcolm, J., at pp. 342-353;

Dissenting opinion by Johns, J., at pp. 353-391.

II.

Jurisdiction.

1. The date of the decision to be reviewed is February 4th, 1928 (R., p. 315). The Petition for Rehearing was denied on February 16th, 1928, and judgment entered on February 18th, 1928 (R., p. 397). This application, if docketed prior to August 18th, 1928, is therefore timely.

2. (a) In the Court of First Instance the plaintiff (petitioner here) sought two forms of relief, a mandamus requiring the defendant to appoint him to a certain benefice or Chaplaincy, to which he claimed to be entitled under the Will of his ancestress, the Foundress of the endowment, and an accounting for and payment to him of the income of the Foundation during the vacancy of the benefice (R., pp. 7, 8). The Court of First Instance ruled that he was entitled to relief in both aspects and awarded him a money judgment in the sum of 173,725 Pesos, being the equivalent of $86,862.50 (R., p. 293). The Philippine Supreme Court reversed this judgment and dismissed the Complaint (R., p. 398). The value in controversy thus exceeds $25,000. The value of the Philippine Peso is fixed by statute at two to the dollar (U. S. C. A., Title 48, Chap. 5, Sec. 1142).

(b) In the Courts below the plaintiff also claimed that to permit him to be deprived of his right to the Chaplaincy and its income by virtue of a change in the Canon Law of the Roman Catholic Church promulgated in 1918 was contrary to the Constitution of the United States, the Treaty of 1898 with Spain, the Organic Act of the Philippine Islands and the Philippine Civil Code and other statutes (R., p. 392). This claim was in effect sustained by the Court of First Instance (R., p. 278) and denied by the Philippine Supreme Court (R., pp. 338, 348).

Therefore the Constitution, certain statutes and a Treaty of the United States are all involved in this case.

3. The jurisdiction of this Court is invoked under Section 7 of the Act of February 13, 1925 (U. S. C. A., Title 28, Chap. 9, Sec. 349) re-enacting in substance Section 5 of the Act of September 6, 1916 (39 Stat. 727) which granted such jurisdiction "in any case in the Supreme Court of the Philippine Islands wherein the Constitution, or any statute or treaty of the United States is involved or wherein the value in controversy exceeds $25,000".

4. The grounds of this Court's jurisdiction to review the final judgments of the Philippine Supreme Court by certiorari are substantially the same as by appeal or writ of error under preceding legislation.

See §10, Act of July 1, 1902 (32 Stat. 695),
§248, Judicial Code of 1911,
§5, Act of September 6, 1916 (39 Stat. 727).

The following cases among others, sustain such jurisdiction.

De La Rama vs. *De La Rama,* 201 U. S. 303; 241 U. S. 154;
Villanueva vs. *Villanueva,* 239 U. S. 293;
Cariño vs. *Insular Government,* 212 U. S. 449;
Ingenohl vs. *Olsen,* 273 U. S. 541.

The amount in controversy being definitely fixed by the Record as well in excess of the jurisdictional requisite, this Court is vested beyond question with jurisdiction of the entire case, and it is therefore unnecessary upon this application to discuss further the other jurisdictional grounds.

III.

Statement of the Case.

A full statement of the case, as succinct as the somewhat involved facts and the length of the Record permit, has been given under the heading "A" in the Petition (*supra*, pp. 1-6). In the interest of brevity this statement will not be repeated at this point. The difficulty of attaining the proper degree of brevity, and at the same time the "studied accuracy * * * and clearness" required by this Court (*Furness Withy & Co., Ltd.* vs. *Yang Tsze Insurance Association, Ltd.*, 242 U. S. 430) will be realized when it is considered that the Opinions below make up a total of 140 printed pages. Repetition will therefore be sedulously avoided, and such further discussion of the facts as appears necessary will be found in the Argument.

The Opinions below state the facts and present both sides of the case so fully and fairly that there will be little occasion for this Court, upon this application, to examine further into the Record. Especial attention is invited to the excellent dissenting opinion of Mr. Justice Johns (pp. 353-391).

IV.

Specification of Errors.

1. The Supreme Court of the Philippine Islands erred in finding and holding that plaintiff was not entitled to an accounting of the income of the Foundation, established by Petronila de Guzman, during the vacancy of the benefice.

2. Said Court erred in finding and holding that plaintiff was not entitled to payment of the income found due upon such accounting, or any part thereof.

3. Said Court erred in finding and holding that plaintiff was not entitled to appointment as Chaplain pursuant to the Will of Petronila de Guzman.

4. Said Court erred in finding and holding that plaintiff was not entitled to any relief in this suit.

5. Said Court erred in finding and holding that relief could be granted only in a class suit in behalf of all the descendants of Petronila de Guzman, and that this suit could not be so treated.

6. Said Court erred in finding and holding that the Canon of 1918 was effective to debar plaintiff from appointment to the Chaplaincy and from receiving the income of the Foundation.

7. Said Court erred in finding and holding that plaintiff should have appealed to the Pope from the decision of the Archbishop.

8. Said Court erred in finding and holding that the ecclesiastical authorities were competent to be legislators and judges in their own cause.

9. Said Court erred in finding and holding that plaintiff's right to the income of the Foundation was not protected by the Constitution of the United States, the Treaty of 1898 with Spain and the Organic Act of the Philippine Islands.

10. Said Court erred in reversing the judgment of the Court of First Instance and dismissing the Complaint.

V.

ARGUMENT.

Summary of the Argument.

Point A. The decision below defeats the testamentary intentions of Petronila de Guzman and permits the diversion of the income of the Foundation established by her executor pursuant to her will into channels expressly excluded by the deed of Foundation.

Point B. The decision below permits the changes in the Canon Law made in 1918 to operate retroactively in such a way as to defeat and divest rights of property accruing to petitioner under the will of his ancestress and permits the ecclesiastical authorities to be both legislators and judges in their own cause.

Point C. If this court considers that a class suit is necessary, this action should be so treated, in order to prevent injustice and unnecessary delay and circumlocution.

POINT A.

The Testamentary Intentions of Petronila de Guzman.

Out of the long history of more than a hundred years shown by this voluminous Record, one fact stands out clearly; the testamentary intention disclosed by the Will of Petronila de Guzman, and emphasized by the deed or contract of Foundation made by her Executor, that her nearest male relative in the line of descent, if any there should be, should enjoy the revenues of the Foundation, subject only to the duty of saying a certain number of masses in each

year, if qualified to do so, or causing them to be said by a qualified priest and paying the customary charge therefor out of the income.

She may have cherished the pious hope that each successive incumbent should in due course become a priest, but the history of the Foundation shows that none of them did so, thus demonstrating, by practical construction, that this was not a condition, either precedent or subsequent, to the enjoyment of the benefice.

In the case of these ancient Chaplaincies, the Philippine Courts usually give great weight to the course actually pursued through their history.

> See *City of Manila* vs. *Archbishop of Manila,* 36 Phil. Rep. 815;
> *Capellania de Tombobong* vs. *Cruz,* 9 Phil Rep. 145.

These facts are undisputed, but the Court below has permitted the purpose of this Foundation to be defeated and the income of the Foundation to be applied to general educational purposes, in direct contravention of the condition in the deed of Foundation against the conversion of the property "into any other estate for any cause, even though of a more pious character" and the declaration that anything done to the contrary shall be null and void (R., p. 320). There has been an express and undenied breach of this condition by the defendant in the registration of the property in his own name by a Torrens title (R., p. 323). It is true that the right to proceed independently against this registration has been reserved (R., p. 340) but the fact of the registration is of cardinal evidentiary importance as showing the disregard by the ecclesiastical authorities of

the testamentary limitations under which the property was received and held, and thus has a direct bearing upon the right to an accounting for the income. The registration should have been in the name of the "Capellania" itself as a juristic person.

> See *Capellania de Tombobong* vs. *Antonio,* 8 Phil. Rep. 683;
> *Capellania de Tombobong* vs. *Cruz,* 9 Phil. Rep. 145.

It is to be observed that at no stage of the cause has the lawful character of the Foundation, under the applicable local law, been questioned.

It was assumed, as apparently not subject to controversy, in *Gonzalez* vs. *Harty,* 32 Phil. Rep. 328 (1915), in which the last preceding incumbent, after resignation, sued the Archbishop for a judicial accounting and was defeated upon the sole ground that he was concluded by his own acceptance of a previous voluntary accounting and payment, which was not impeached upon any sufficient grounds. It is significant that upon such voluntary accounting, the net income of the Chaplaincy during the last preceding vacancy had been accounted for and paid to the plaintiff in the case cited. Thus the same rule was applied on this subject in the Philippines as prevails under English Ecclesiastical Law, namely, that the income of a benefice during a vacancy goes to the next incumbent. (See Burn, Ecclesiastical Law, Vol. 4, p. 1, *et seq.*)

The Canon (§1481) providing for a different disposition of the income of a vacant benefice (R., pp. 40, 96) appears to be another of the innovations of 1918, and it would, moreover, be inappropriate to apply it to a "Capellania colativa

familiar'' limited to a particular family, such as this (R., pp. 360, 361).

The inviolability of lawful testamentary intentions has been repeatedly declared and sustained by this Court. Upon this point it is deemed unnecessary to cumulate authorities, but reference may be had to

Gray vs. *Noholoa,* 214 U. S. 108;
Kenaday vs. *Sinnott,* 179 U. S. 606, 616.

POINT B.

The Effect of the Canon of 1918.

It is this point which justifies the opening sentence of Mr. Justice Malcolm's concurring Opinion:

> ''This is a most unusual case without a parallel in American or Spanish jurisprudence'' (R., p. 342),

and makes it particularly appropriate and desirable that the question be determined clearly, compendiously and conclusively by this Court.

The essence of the question may be thus summarized:

> May the unquestionable powers of the duly constituted ecclesiastical authorities of a Church to regulate its spiritual affairs and ecclesiastical discipline be so applied as to divert the income of a private testamentary Foundation from the *purposes* or the *persons* contemplated by the Will and the deed of Foundation and may such authorities both legislate and adjudge in their own favor to this end?

It is impossible to condense within the limits indicated by this Court as appropriate for a brief in support of a

petition for certiorari an exhaustive argument of all of the aspects of this question, involving as it does the nature of "Chaplaincies," "collative" or otherwise, under Spanish and Canon Law; the general law of ecclesiastical benefices; and the limitations properly to be placed under the Constitutional guarantees upon the effect of ecclesiastical action, whether local or general, upon rights of property previously created and existing. For the purposes of this brief, the argument of this Point will be limited to the enunciation of a series of propositions, supported by authority, which it is believed are applicable to the case at bar.

1. The plenary power of ecclesiastical authority is limited to matters ecclesiastical and spiritual. When property rights are affected, the law of the land must prevail.

Watson vs. *Jones*, 13 Wall. 679;
White Lick Society of Friends vs. *White Lick Society of Friends*, 89 Ind. 136.

2. The right of the persons entitled under the Will of the Foundress to enjoy the income of the benefice is a property right.

This was not questioned by the Court below, and the existence of some outstanding property rights was recognized by the express reservation in the Court's decision (R., pp. 340, 341).

When the similar Chaplaincies in Spain were disamortized by legislation, the property rights were preserved for the "nearest relative of the preferred line", and conflicting claims were determined by the Civil Courts.

See 8 Jurisprudencia Civil 372, May 30, 1863;
Alcubilla's Diccionario, Vol. 2, pp. 259, 261.

This disamortization, however, was not extended to the Philippines.

See *Catholic Church* vs. *Municipality of Badoc*, 10 Phil. Rep. 659, 671.

3. Under the Will and the deed of Foundation it was sufficient that the candidate should be qualified ultimately to become a priest. He was not required to be already a "clerical".

This was in effect held by both Courts below and is further demonstrated by the whole history of the Chaplaincy.

4. The change of the Canon in 1918, however effective to regulate the performance of ecclesiastical functions by a person presented for institution as Chaplain, cannot operate to deprive him, if qualified under the Will of the Foundress, of the secular and pecuniary benefits of the Foundation, without contravening the fundamental law guaranteeing property rights. In this Chaplaincy the incumbent is not required to perform any ecclesiastical functions in his own person (*"per si ipsum"*) but only to cause masses to be said and pay for them.

It is contrary to the underlying conceptions of American jurisprudence, which now protect the sanctity of property and contract rights in the Philippines (*Cariño* vs. *Insular Government*, 212 U. S. 449, 459; *Vilas* vs. *Manila*, 220 U. S. 345, 360), that any ecclesiastical power, however exalted, should first, as legislator, change its own laws or canons to the prejudice of outstanding property rights, and then as judge, or administrative functionary exercising discretionary power, interpret and enforce them, to the im-

poverishment of the individual or individuals in whom the property rights subsist and to the enrichment of its own coffers. This suit is in name against the Archbishop of Manila, but he stands as the representative of the Church (see *Harty* vs. *Sandin*, 11 Phil. Rep. 451) which, in the territories acquired by the Treaty of 1898 with Spain is a solidary juristic entity capable of holding and owning property.

Ponce vs. *Roman Catholic Church*, 210 U. S. 296.
Barlin vs. *Ramirez*, 7 Phil. Rep. 41;
Evangelista vs. *Ver*, 8 Phil. Rep. 653.

When the Church holds property in a fiduciary capacity, as here, it cannot by a change in its internal law alter or eliminate its fiduciary responsibilities, and then by the mouth of its local representative determine the cause in its own favor.

For this reason, among others, the possible appeal to the Pope, mentioned in the opinion of the Court (R., p. 330) and in the concurring opinion (R., p. 347), would manifestly have been an idle formality, not to be required as a condition precedent to recourse to the Civil Courts (see Opinion of Trial Court at p. 274). The same rule should apply as in the case of confiscatory legislation or regulation by one of the American States. It is not required that all remedies in the State Tribunals be exhausted before applying for relief to the Federal Courts.

See *Prendergast* vs. *New York Telephone Co.*, 262 U. S. 43, 48;
Banton vs. *Belt Line Ry.*, 268 U. S. 413, 417.

The Canon Law itself has recognized the lack of power in the ecclesiastical authorities to vary the terms of such a bequest. In the monumental work of Franciscus Maria Pitonius, an "*advocatus Romanus*" with an evidently extensive practice before the Roman Rota, published in Parma in 1719, and entitled:

> "De Controversiis Patronorum, necnon ab Eis Praesentatorum ad Beneficia et Capellanias quascunque, et alia Relicta Pia" ("Concerning the controversies of Patrons as well as of those presented by them to Benefices and Chaplaincies of whatever kind and to other Pious Endowments");

it is said, in Allegatio XXXIII, n. 37 (Tom. 1, p. 275),

> "Neque potuisset Episcopus per ejus sententiam etiam expressam institutionem praeferentem alterare qualitatem dictae Capellaniae contra voluntatem Fundatricis in praejudicium eorum quibus ejus vigore competit jus";

which may be translated as follows:

> "Nor can the Bishop, even by his own express decree conferring institution, alter the quality of such a chaplaincy against the will of the Foundress and to the prejudice of those to whom the right pertains by its own force."

In regard to the Chaplaincy there discussed, it was held that it was not required to be held by a priest, because the obligation to say masses was not coupled with a clause requiring the Chaplain to do so in his own person ("Nisi etiam concurrat obligatio celebrandi cum clausula *per si ipsum*").

POINT C.

This should be treated as a class suit, if such a suit is deemed necessary.

It appears from the Record that there is only one other person who might claim to be qualified and entitled under the Will of the Foundress and that he has expressly disclaimed any rights he may have (R., pp. 372, 265, 136). The plaintiff therefore embodies in his own person the "class" entitled to relief. To guard against any possible unjust result, leave might be granted, upon a reversal and remand, to all other descendants of the Foundress to come in as co-plaintiffs upon equitable terms, and assert their claims, if any, to share in the benefit of the judgment. This would be in accord with the spirit of the prevailing opinion (R., p. 340).

The situation is this: the litigation has been pending for nearly four years; all of the controversial facts have been determined, an accounting has been had and the amount of the accumulated income from the Foundation which has *not* been applied in accordance with the Will has been adjudged, and the correctness of the figures, which were furnished by the defendant, is apparently unchallenged. Whether the plaintiff is solely entitled or whether some or all of the other descendants of the Foundress should have an opportunity to come in and assert any claims they may have, this result at least should be preserved, and the defendant should no longer be permitted to retain funds to which in any event he is not entitled, officially or individually, or to continue to misapply them to other uses even if "more pious", as he is apparently doing in many other cases as well as in this (R., pp. 112, 131).

The Court below recognized this in principle (R., pp. 340, 398), but its judgment places upon the "Class" the burden of doing all over again that which has already been done, whether for them collectively or for himself individually, by the plaintiff. The defendant cannot be prejudiced by being spared the expense of a repetition of the litigation under a different title.

There is good American precedent for permitting a suit originally brought by one party, solely on his own behalf, to be converted by order of Court into a class suit for the benefit of all similarly situated, and affording them all an opportunity to come in and assert their claims.

> See *Williams' Admr.* vs. *Newman,* 93 Va. 719, 724;
> *Neeley* vs. *Jones,* 16 W. Va. 625, 648.

This Court has always regarded class suits as properly subject to great elasticity of treatment.

> See *Smith* vs. *Swormstedt,* 16 How. 288;
> *Stewart* vs. *Dunham,* 115 U. S. 61;
> *Supreme Tribe of Ben Hur* vs. *Cauble,* 255 U. S. 356.

The Philippine Code of Civil Procedure permits amendments at any stage including appeal (§110), and the voluntary intervention or compulsory joinder of parties (§§121, 122), and where an answer has been interposed the granting of "any relief consistent with the case made by the complaint and supported by the evidence and embraced within the issue (§126).

If a class suit is deemed necessary, this suit now before the Court can and should be so treated, as pointed out by Mr. Justice Johns in his dissenting Opinion (R., p. 390).

CONCLUSION.

This cause is pre-eminently one calling for the exercise by this Court of its supervisory powers, in order that a novel, difficult and important question may be determined, delay avoided, justice done and the continued diversion of trust funds prevented. To such end a writ of certiorari should be granted as prayed, and this Court should review and reverse the decision of the Supreme Court of the Philippine Islands, determine the rights of the parties and remand the cause with directions to affirm the decision of the Court of First Instance of Manila, or to treat this as a class suit and take such further proceedings as may be appropriate in the premises.

Respectfully submitted this 26th day of June, 1928.

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Supreme Court of the United States

OCTOBER TERM, 1928.

No. 620

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,

Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PETITIONER.

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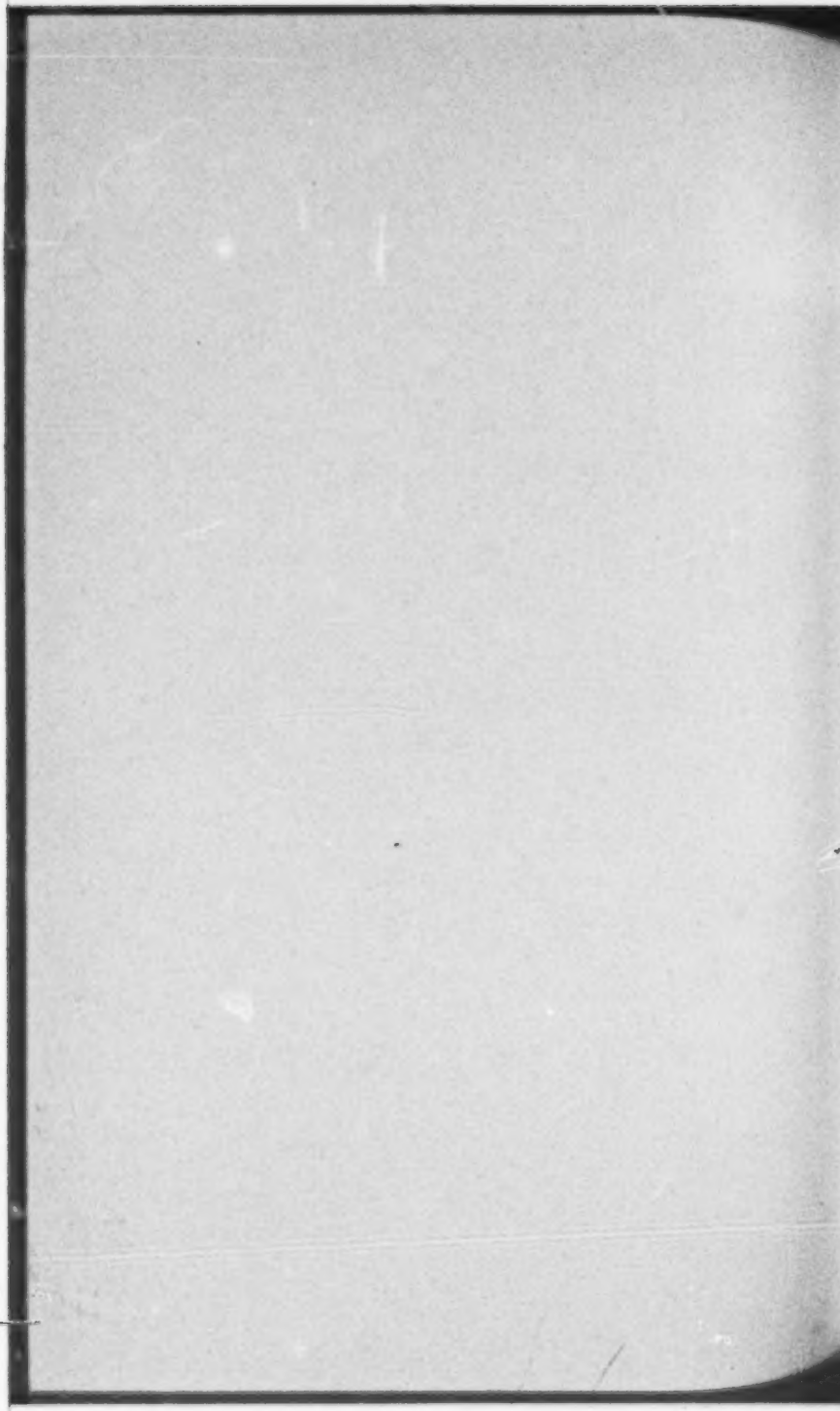

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Supreme Court of the United States

OCTOBER TERM, 1928.

No. 226

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* ADELAIDA GONZALEZ,
Petitioner,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PETITIONER.

The Opinions of the Courts Below.

The opinion of the Court of First Instance of Manila is not reported. It was rendered on December 20th, 1926, and will be found in the Record at pp. 230-294. The opinions in the Philippine Supreme Court have not yet appeared in the Philippine Reports received in this country. The latest volume in the library of the New York City Bar Association comes down only to March 20, 1926. The decision was rendered on February 4, 1928, and the opinions will be found in the Record as follows:—

Opinion of the Court, by Street, J., at pp. 315-341;

Concurring opinion, by Malcolm, J., at pp. 342-353;

Dissenting opinion, by Johns, J., at pp. 353-391.

These opinions state the facts and present both sides of the case so fully and fairly that there will be little occasion for this Court to examine further into the Record. Especial attention is invited to the excellent dissenting opinion of Mr. Justice Johns (Rec. pp. 353-391).

The Jurisdiction of This Court.

(1) The date of the decision to be reviewed was February 4, 1928 (Rec. p. 315). The petition for re-hearing was denied on February 16, 1928, and judgment was entered on February 18, 1928 (Rec. p. 397). The application for certiorari was docketed on June 26th, 1928, and was therefore in due season. The petition was granted on October 15th, 1928.

(2) (a) The Court of First Instance awarded plaintiff relief by mandamus requiring his appointment to a certain hereditary Chaplaincy, and also a money judgment against defendant in the sum of 173,725 pesos (Rec., p. 293), being the equivalent of $86,862.50 at the statutory rate of exchange (see U. S. Code Annotated, Title 48, Chap. 5, §1142). The Philippine Supreme Court, by a divided Court, and with three judges not voting, reversed this judgment and directed a dismissal of the Complaint (Rec., p. 398). This is therefore a case "wherein the value in controversy exceeds $25,000" and this Court has jurisdiction

under §7 of the Act of February 13, 1925 (U. S. Code Annotated, Title 28, Chap. 9, §349), re-enacting in substance §5 of the Act of Sept. 6, 1916 (39 Stat. 727).

(b) It was also contended by plaintiff in the Courts below that to permit him to be deprived of his right to the income of the Chaplaincy by virtue of a change in the Canon Law promulgated in 1918 was contrary to the Constitution of the United States, the Treaty of 1898 with Spain, the Organic Act of the Philippine Islands, the Philippine Civil Code and other statutes (Rec. p. 392). This contention was in effect sustained by the Court of First Instance (Rec. p. 278) and denied by the Philippine Supreme Court (Rec. pp. 338-348). This Court therefore has jurisdiction of this case as one "wherein the Constitution or any Statute or Treaty of the United States is involved", under the Act of February 13, 1925, above cited.

(3) The grounds of this Court's jurisdiction to review final judgments of the Philippine Supreme Court by *certiorari* are substantially the same as by appeal or writ of error under preceding legislation.

See

§10, Act of July 1, 1902 (32 Stat. 695);
§248, Judicial Code of 1911;
§5, Act of September 6, 1916 (39 Stat. 727).

(4) The following cases, among others, sustain such jurisdiction:

De la Rama vs. *De la Rama*, 201 U. S. 303; 241 U. S. 154;
Cariño vs. *Insular Government*, 212 U. S. 449;
Villanueva vs. *Villanueva*, 239 U. S. 293;
Ingenohl vs. *Olsen*, 273 U. S. 541.

Statement of the Case.

There is no substantial issue or question of fact in the case. The facts were found with no important variation by the Court of First Instance and by both the majority and minority of the Philippine Supreme Court. They are complicated and cover a long period of time, but those essential to the controversy may be summarized with comparative brevity, substantially as follows:

On March 13, 1816, Doña Petronila de Guzman made her last Will and Testament, containing the following provisions:

> "Ninth Item. I declare and charge that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister Da. Vincenta de Guzman we have constructed with our own money, the expenses of which amount to one thousand six hundred pesos without including the value of the lot on which it is erected, and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. José Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian (*colegial*) of San Juan de Letran, who should be an orphan *mestizo,* native of this said town, and I request the Father chaplain to celebrate sixty masses annually, which should be said in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in behalf of the souls of my father, Dn. Thomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and my broth-

ers and sisters, and for me, the testatrix after my days.

Tenth Item:—It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.

Eleventh Item:—I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain" (Rec., pp. 61, 62, 317).

After making this Will and prior to April 24, 1820, the testatrix died. On April 24, 1820, Don José Telesforo de Guzman, the executor named in the Will, presented a petition to the then Archbishop of Manila on behalf of himself and of his son, the designated Chaplain,

> "praying that you declare the living sufficient and order that a title to such chaplaincy issue to my son and to me, the administrator, during his minority" (Rec., pp. 49-55, 318-319).

On April 26, 1820, the executor executed a deed of the property, whereby he transferred it

> "to the spiritual properties of this Archbishopric, with the restriction that, as a spiritual property, it cannot be alienated or converted into any other estate for any cause, even though of a more pious character, (the grantor) protesting that if the contrary should be done from now until then, he declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents" (Rec., pp. 318-320).

The Promotor Fiscal reported his approval of the application (Rec. pp. 55, 56, 321), and on May 12, 1820, the Archbishop approved

> "the foundation of Chaplaincy with all the circumstances and conditions provided for in said clause (of the Will) and in the Deed of Foundation"

and directed that

> "after this proceeding said executor will present himself to the Parish priest in order that the proper appointment may be issued to the proper Chaplain" (Rec. pp. 57, 58).

The first Chaplain thus appointed was, at the time, thirteen years of age (Rec. p. 35).

Since its foundation five Chaplains in all have been appointed to this benefice. As found by the Court below,

> "the first and second Chaplains were great grandsons of the Foundress, the third was a great great grandson and the fourth and fifth great great great grandsons. At the time of their appointments they were respectively more than thirteen, twenty-two, twenty-seven and nineteen years old" (Rec. pp. 35, 322).

The fifth and latest holder of the benefice, Angel Gonzalez, was the father of the petitioner. He was appointed on June 20th, 1901 and resigned on December 6th, 1910, since which date the Chaplaincy has been vacant (Rec. pp. 35, 36, 322). The instrument embodying his appointment reads:

> "We hereby give him collation, canonical institution and real possession *vel quasi* of the above mentioned chaplaincy, which shall be administered as heretofore by the administrator of the funds of this Holy Archbishopric, so that, as such chaplain he may possess and enjoy it as an Ecclesiastical benefice and by perpetual title with the obligation of ordering to

be said, by means of a priest, while he himself cannot say them, sixty masses annually according to the Will of the Foundress, and with the understanding that every year he has to show to our Court of Chaplaincies wherein this shall be recorded, that he has discharged said masses without which requisite the rent which for the purpose may be necessary shall be withheld from him. And by virtue of Holy Obedience we order those to whom these presents may concern to have and treat the said D. Angel Gonzalez y Guzman as the beneficiary and possessor of said chaplaincy, and that they pay him well and faithfully the income which in the future the capital may produce and that which it has produced while vacant, placing upon his conscience the duty of complying with the annexed conditions and relieving us thereof'' (Rec. pp. 322, 323).

At the time of the institution of the Chaplaincy the annual income of the property of the Foundation was 180 Pesos (Rec. p. 50). This has increased in present times to well over 12,000 Pesos (Rec. pp. 90, 91). The present cost of having sixty masses said per year by some one other than the Chaplain, when the Chaplaincy is vacant, or the incumbent is not a duly ordained and qualified priest, is not over 300 Pesos (Rec. p. 323), so that the present net income of the Foundation, which the Foundress so clearly intended should always be enjoyed by some one of her blood, so long as any remained, is fully 12,000 Pesos per year.

After the resignation of Angel Gonzalez as Chaplain in 1910 there was an accounting and settlement of the income of the Chaplaincy to the end of that year. This accounting included the net income of the Chaplaincy during the last preceding vacancy (Rec., p. 112), to which he was entitled

under the terms of the instrument appointing him (Rec., p. 323).

Since that time the defendant has applied the income to other purposes (Rec., p. 324) and has also caused the property to be registered in his own name and official capacity by a Torrens title free of any trust (Rec., pp. 67, 68).

The plaintiff, who is the eldest son of Angel Gonzalez, the last Chaplain, and the nearest relative in descent from the first Chaplain and from the Foundress, applied for appointment as Chaplain. By a letter of February 25, 1922 (Exh. B., Rec., pp. 58, 59), the President of the College of San Juan de Letran, the Patron of the Chaplaincy under the Will of the Foundress, presented plaintiff to the Archbishop for such appointment, certifying that he was the heir to the Chaplaincy. By letter dated March 20th, 1922, addressed to plaintiff's father, the Archbishop rejected the application upon the ground that under the Code of Canon Law promulgated in 1918 certain ecclesiastical qualifications were required for the office of Chaplain and that they were not possessed by plaintiff (Exh. C., Rec., pp. 59, 60). Prior to 1918 the only relevant requirement was one of age, which was met by plaintiff at or before the time of the trial of the cause (Rec., p. 328). As indicated in the concurring opinion of Mr. Justice Malcolm in the Court below (Rec., p. 347):

> "Broadly speaking, Raul Rogerio Gonzalez met the requirements of the Church before the Canon Law of 1918 went into effect."

By the *Codex Juris Canonici* (Canon 1442) promulgated from Rome in 1918, it was provided (Rec., pp. 346, 347):

"The Chaplaincies or simple benefices are conferred on clericals of the secular clergy."

Under the *Codex* of 1918, in order to be a "clerical", one must have the "first tonsure", and have begun the study of theology (see Canons 109, 976). He must also be a "bachiller" (Rec., p. 36). This term is defined in Alcubilla's Diccionario (Vol. 1, p. 972), as one who has received the first Academic Degree. The plaintiff does not possess these qualifications, but it was found below that plaintiff possesses "more learning and intelligence than any previous Chaplain at the time of his appointment" (Rec., p. 373).

The question is thus squarely presented whether the Canon of 1918 is effective to bar plaintiff's appointment and also to authorize the Archbishop to divert the income of the Foundation to purposes not contemplated by the Foundress. It is to be noted that from the time of the foundation of the Chaplaincy the successive incumbents were not at the time of their respective appointments qualified to say the masses provided for by the Foundress, and that it was prescribed in 1901 in respect to the last preceding incumbent that he should be under the "obligation of ordering to be said by means of a priest, while he himself cannot say them, sixty masses annually according to the will of the Foundress" (R., p. 323).

None of the previous Chaplains was a "clerigo" at the time of his appointment (R., p. 36), and it does not appear that any ever became a priest. The latest incumbent, Angel Gonzalez, "did not finish the career of priesthood in the Seminary of Manila" (Rec., p. 63). He testified that he was not "tonsured" at the time of his appointment (Rec., pp. 144, 145). It was established that the plaintiff was the nearest surviving relative of the Foundress and of the

first Chaplain, and that no other relative made any claim to the Chaplaincy (Rec., pp. 327, 328, 372).

The provision for the appointment, in default of a descendant of the Foundress, of a student of the School of "San Juan de Letran, who should be an orphan *mestizo*", shows that the Foundress did not intend or expect that the Chaplain should be in orders at the time of his appointment. As Mr. Justice Johns points out (Rec., p. 383):

> "That is nothing more than a high school, or one of secondary education, and there is no claim or pretense that any of its students is a 'clerigo' or possesses the necessary qualifications to be appointed Chaplain under the Canon law of 1918."

Thus, if the line of descendants should be extinguished and the Canon of 1918 applied, the Chaplaincy would remain forever vacant, and the secondary objects of the bounty of the Foundress would be permanently excluded from its benefits.

The Foundress and her executor manifestly contemplated the following as the objects to be attained by the establishment of the Chaplaincy:

1. That its emoluments should be enjoyed by her nearest relative, so long as there might be one surviving, and in default of such relative by an "orphan *mestizo*" student of the College of San Juan de Letran.

2. That sixty masses a year for the repose of her soul, and of the souls of certain members of her family, should be said by the Chaplain, if qualified, or otherwise by some qualified priest at the expense of the income of the Foundation.

3. That neither the property nor the income should ever be diverted to any other purpose.

The reversal by the Philippine Supreme Court of the judgment in favor of plaintiff rendered by the Court of First Instance leaves the defendant free to proceed with this diversion of the income of trust funds which has continued for the past eighteen years, unless some other and different proceedings shall be brought against him by a class which would necessarily include plaintiff, and upon the same facts which appear in the present Record. The right to bring such a class suit was expressly reserved by the Court below (Rec. pp. 340, 341).

Specification of Errors.

1. The Supreme Court of the Philippine Islands erred in finding and holding that plaintiff was not entitled to an accounting of the income of the Foundation established by Petronila de Guzman, during the vacancy of the benefice.

2. Said Court erred in finding and holding that plaintiff was not entitled to payment of the income found due upon such accounting, or any part thereof.

3. Said Court erred in finding and holding that plaintiff was not entitled to appointment as Chaplain pursuant to the Will of Petronila de Guzman.

4. Said Court erred in finding and holding that plaintiff was not entitled to any relief in this suit.

5. Said Court erred in finding and holding that relief could be granted only in a class suit in behalf of all the descendants of Petronila de Guzman, and that this suit could not be so treated.

6. Said Court erred in finding and holding that the Canon of 1918 was effective to debar plaintiff from appointment to the Chaplaincy and from receiving the income of the Foundation.

7. Said Court erred in finding and holding that plaintiff should have appealed to the Pope from the decision of the Archbishop.

8. Said Court erred in finding and holding that the ecclesiastical authorities were competent to be legislators and judges in their own cause.

9. Said Court erred in finding and holding that plaintiff's right to the income of the Foundation was not protected by the Constitution of the United States, the Treaty of 1898 with Spain and the Organic Act of the Philippine Islands.

10. Said Court erred in reversing the judgment of the Court of First Instance and dismissing the Complaint.

The foregoing errors were specified in the Petition for *Certiorari*. They are all urged, with special emphasis on Numbers 1, 4, 5, 6, 7 and 10.

ARGUMENT.

Summary.

I. The decision below defeats the testamentary intentions of Petronila de Guzman and permits the diversion of the income of the Foundation established by her executor pursuant to her Will into channels expressly excluded by the deed of Foundation.

II. The decision below permits the changes in the Canon Law made in 1918 to operate retroactively in such a way as to defeat and divest rights of property accruing to petitioner under the Will of his ancestress and permits the ecclesiastical authorities to be both legislators and judges in their own cause.

III. Appeal to the Pope was not a necessary condition precedent to recourse to the Civil Courts.

IV. If it be considered that a class suit is necessary, this action should be so treated, in order to prevent injustice and unnecessary delay and circumlocution.

POINT I.

The decision below defeats the testamentary intentions of the Foundress.

For nearly a hundred years—from 1820 to 1910—the history of this Chaplaincy discloses a continuous carrying out of the testamentary intention expressed in the Will of the Foundress, Petronila de Guzman, enphasized by the deed of Foundation made by her Executor, and reiterated in the instrument whereby the latest incumbent was installed in 1901. This intention was clear and beyond question; namely, that the nearest male relative in the line of

descent from the Foundress, if any there should be, should enjoy the revenues of the Foundation, subject only to the duty of saying a certain number of masses in each year, if qualified to do so, or causing them to be said by a qualified priest and paying the customary charge therefor out of the income.

She may have cherished the pious hope that each successive incumbent should in due course become a priest, but the history of the Foundation shows that none of them did so, thus demonstrating, by practical construction, that this was not a condition, either precedent or subsequent, to the enjoyment of the benefice.

She doubtless also desired that when an incumbent should be appointed in his youth, he should take advantage of the opportunity thus afforded to secure the education requisite to qualify him for the priesthood, and such appears to have been the intention of the plaintiff (Rec. p. 150). That the appointment, in default of any available descendant of the Foundress, of a young man, not yet a priest, was contemplated is shown by the provision for the designation in such event of an "orphan *mestizo*" student at a secondary School (Rec. pp. 61, 383).

In cases involving these ancient Chaplaincies, the Philippine Courts usually give great weight to the course actually pursued through their history.

See

City of Manila vs. *Archbishop of Manila*, 36 Phil. Rep. 815;

Capellania de Tombobong vs. *Cruz*, 9 Phil. Rep. 145.

The facts above outlined are undisputed, but the Court below has permitted the purpose of this Foundation to be

defeated and the income of the Foundation to be applied to general educational purposes, in direct contravention of the condition in the deed of Foundation against the conversion of the property "into any other estate for any cause, even though of a more pious character" and the declaration that anything done to the contrary shall be null and void (Rec. p. 320). There has been an express and undenied breach of this condition by the defendant in the registration of the property in his own name by a Torrens title (Rec., p. 323). It is true that the right to proceed independently against this registration has been reserved (Rec. p. 340), but the fact of the registration is of cardinal evidentiary importance as showing the disregard by the ecclesiastical authorities of the testamentary limitations under which the property was received and held, and thus has a direct bearing upon the right to an accounting for the income. The registration should have been in the name of the "*Capellania*" itself as a juristic person.

See

Capellania de Tombobong vs. *Antonio,* 8 Phil. Rep. 683;

Capellania de Tombobong vs. *Cruz,* 9 Phil. Rep. 145.

It is to be observed that at no stage of the cause has the lawful character of the Foundation, under the applicable local law, been questioned.

It was assumed, as obviously not subject to controversy, in *Gonzalez* vs. *Harty,* 32 Phil. Rep. 328 (1915), in which the last preceding incumbent, after resignation, sued the Archbishop for a judicial accounting and was defeated upon the sole ground that he was concluded by his own accept-

ance of a previous voluntary accounting and payment, which was not impeached upon any sufficient grounds. It is significant that upon such voluntary accounting, the net income of the Chaplaincy during the last preceding vacancy had been accounted for and paid to the new incumbent, in accordance with the terms of his appointment (Rec., p. 100). Thus the same practice was followed on this subject in the Philippines as prevails under English Ecclesiastical Law, namely, that the income of a benefice during a vacancy goes to the next incumbent (See Burn, Ecclesiastical Law, Vol. 4, p. 1, *et seq.*).

The Canon (§1481) providing for a different disposition of the income of a vacant benefice (R., pp. 40, 96) appears to be another of the innovations of 1918, and it would, moreover, be inappropriate to apply it to a *"Capellania colativa familiar"*, limited to a particular family, such as this (R., pp. 360, 361).

The inviolability of lawful testamentary intentions has been repeatedly declared and sustained by this Court. Upon this point it is deemed unnecessary to cumulate authorities, but reference may be had to

Gray vs. *Noholoa*, 214 U. S. 108;
Kenaday vs. *Sinnott*, 179 U. S. 606, 616.

That Spanish law recognized the same rule as applicable to the testamentary foundation of a Chaplaincy appears from the authorities cited on this point by the Court of First Instance (Rec. p. 277).

Under the decision below the testamentary intentions of the Foundress are completely defeated and left to remain forever frustrated unless a class suit on behalf of all of her descendants is brought as a new and independent proceeding.

POINT II.

The decision below permits the Canon of 1918 to be applied retroactively to defeat and divest property rights and allows the ecclesiastical authorities to be both legislators and judges in their own cause.

It is this point which justifies the opening sentence of Mr. Justice Malcolm's concurring opinion:

> "This is a most unusual case without a parallel in American or Spanish jurisprudence" (Rec., p. 342).

The essence of the question may be thus summarized:

> May the unquestionable powers of the duly constituted ecclesiastical authorities of a Church to regulate its spiritual affairs and ecclestiastical discipline be so applied as to divert the income of a private testamentary Foundation from the *purposes* or the *persons* contemplated by the Will and the deed of Foundation and may such authorities both legislate and adjudge in their own favor to this end?

The history of Chaplaincies, under the earlier Canon Law and under the Spanish law as applied in the Philippine Islands, offers an interesting field of research, but throws little light upon the question here presented. The essential facts as to the nature and classification of Chaplaincies are set forth in the opinions below (Rec., pp. 326, 360, 361) and are not in dispute.

The Chaplaincy here involved is a *Capellania colativa familiar,* being "instituted with the intervention of the

ecclesiastical authority" and calling "for relatives of the Founder or of the persons whom he designed as trunk, to enjoy the Chaplaincy" (Rec., pp. 360, 361).

Such Chaplaincies appear to have been a frequent form of pious Foundation, both in the Islands and in Spain, where, however, they were disamortized by a series of legislative acts, beginning in or about 1820 and continuing until 1867 (See Alcubilla, Diccionario, Vol. 2, p. 118 *et seq.*). In the Philippines they have been undisturbed by legislation, and are recognized as having juristic entity (See *supra*, p. 15, and *infra*, p. 21).

Their purpose appears to have been to provide a source of support for a succession of members of the Founder's family and at the same time to secure the saying of masses for the benefit of the family. The ecclesiastical character of the incumbent from time to time appears to have been a minor consideration.

In the absence of any decision of this or any other Court dealing with the precise question presented, it is appropriate to resort to general legal principles. The following propositions are supported by authority and are applicable to the case at bar.

1. The plenary power of ecclesiastical authority is limited to matters ecclesiastical and spiritual. When property rights are affected, the law of the land must prevail.

> *Watson* vs. *Jones*, 13 Wall. 679;
> *White Lick Society of Friends* vs. *White Lick Society of Friends*, 89 Ind. 136.

A notable instance of resort to the Civil Courts in matters affecting ecclesiastical property rights and obligations is the litigation which arose in Scotland in regard to the

properties of the Free Church and which was decided by the House of Lords under the title of *Free Church of Scotland* vs. *Overtoun*, 1904, Appeals Cases, 515.

The Free Church had withdrawn from the Established Church of Scotland, renouncing at the time all of its interest in the ecclesiastical properties of the latter. It adhered, however, to the principle of Establishment and declared itself to be the National Church of Scotland. In such capacity it accumulated a very substantial endowment from contributions and donations. Thereafter the United Presbyterian Church grew up out of a secession from the Free Church. Efforts were made by both parties to bring about a union and such union was eventually agreed upon and entered into by a unanimous vote of the United Presbyterian Church and by a vote of the majority of the governing body of the Free Church. This new body was designated the United Free Church. The representatives of the minority of the Free Church brought suit to recover the properties and endowment which had been turned over to the United Free Church.

The Scottish Courts decided against the Free Church. Upon appeal, the House of Lords reviewed at great length the entire history of the Presbyterian Church in Scotland and its successive disruptions and secessions, the position of its various organizations or branches towards the question of "Establishment" (the relation of the Church to the Civil State); and the centuries-long controversy between Calvinism and Arminianism over the doctrine of predestination; and held that, since the United Free Church left its Ministers and laymen free to hold such opinions as they choose on these questions while the Free Church by its original organization required acceptance of the principle of Establishment and of the Westminster Confession of

Faith, the remnant of the Free Church still adhering to these principles was entitled to retain the properties of the Church as against the majority which had joined with the United Presbyterian Church.

Lord Halsbury, the Lord Chancellor, treated the question as one "affecting the law of trusts and their administration" and said, at p. 626:

> "I do not suppose that anybody will dispute the right of any man or any collection of men to change their religious beliefs according to their own conscience; but when men subscribe money for a particular object and leave it behind them for the promotion of that object their successors have no right to change the object endowed."

It can make no difference in this regard whether the "object endowed" be the maintenance of the doctrine of predestination or the support of a descendant, or whether the change by the ecclesiastical authorities be in their doctrine or their discipline; in either case the fundamental law of trusts requires that the "object endowed" be not deprived of the benefit of the endowment by any such change.

2. The right of the persons entitled under the Will of the Foundress to enjoy the income of the Chaplaincy is a property right.

This was not questioned by the Court below, and the existence of some outstanding property rights was recognized by the express reservation in the Court's decision (Rec. pp. 340, 341).

When the similar Chaplaincies in Spain were disamortized by legislation, the property rights pertaining thereto were preserved for the "nearest relative of the preferred

·line", and conflicting claims were determined by the Civil Courts.

See

8 Jurisprudencia Civil, 372, May 30, 1863;
Alcubilla, Diccionario, Vol. 2, pp. 259, 261.

This disamortization, however, was not extended to the Philippines.

See

Catholic Church vs. *Municipality of Badoc*, 10 Phil. Rep. 659, 671.

3. Under the Will and the Deed of Foundation it was sufficient that the candidate should be qualified ultimately to become a priest. He was not required to be already a "clerical".

This was in effect held by both Courts below (Rec. pp. 277, 336, 347) and is further demonstrated by the whole history of the Chaplaincy.

4. The change of the Canon in 1918, however effective to regulate the performance of sacerdotal functions by a person presented for institution as Chaplain, cannot operate to deprive him, if qualified under the Will of the Foundress, of the secular and pecuniary benefits of the Foundation, without contravening the fundamental law guaranteeing property rights. In this Chaplaincy the incumbent is not required by the terms of the Foundation to perform any priestly functions in his own person (*"per se ipsum"*) but only to cause masses to be said and pay for them. To do this it is not necessary for him to have received even the "first tonsure".

It is contrary to the underlying conceptions of American jurisprudence, which now protect the sanctity of property and contract rights in the Philippines (See *Cariño* vs. *Insular Government*, 212 U. S. 449, 459; *Vilas* vs. *Manila*, 220 U. S. 345, 360), that any ecclesiastical power, however exalted, should first, as legislator, change its own laws or canons to the prejudice of outstanding property rights, and then as judge, or administrative functionary exercising discretionary power, interpret and enforce them, to the impoverishment of the individual or individuals in whom the property rights subsist and to the enrichment of its own coffers for use in other directions.

This suit is in name against the Archbishop of Manila, but he stands as the representative of the Church (See *Harty* vs. *Sandin*, 11 Phil. Rep. 451) which, in the territories acquired by the Treaty of 1898 with Spain, is a solidary juristic entity capable of holding and owning property, and therefore of incurring and performing obligations attached to such ownership.

See

Ponce vs. *Roman Catholic Church*, 210 U. S. 296;
Santos vs. *Roman Catholic Church*, 212 U. S. 463;
Barlin vs. *Ramirez*, 7 Phil. Rep. 41;
Evangelista vs. *Ver*, 8 Phil. Rep. 653.

When the Church as a juristic person thus holds property in a fiduciary capacity, as it does here, it cannot by a change in its internal law alter or eliminate its fiduciary responsibilities, and then by the mouth of its local representative determine in its own favor that its fiduciary responsibilities have been terminated.

While it is true that "that branch of the law known in England and in America as the law of trusts had no exact

counterpart in the Roman law and has none under the Spanish Law" (See *Roman Catholic Bishop of Jaro* vs. *De la Pena*, 26 Phil. Rep. 144), nevertheless the Spanish Law fully recognized the obligations growing out of a fiduciary relation and was rigid in forbidding a fiduciary "to create in himself an interest in opposition" to that of the beneficiary.

See

Severino vs. *Severino*, 44 Phil. Rep. 343, 350, 351;

Orden de Predicadores vs. *Metropolitan Water District*, 44 Phil. Rep. 292.

As appears from the opinions below in this case, there has been a strong tendency since the American occupation of the Islands to assimilate the local law on the subject of fiduciary obligations to the general law of trusts prevailing in the United States.

The Canon Law itself, both before and in the revision of 1918, recognizes the lack of power in the ecclesiastical authorities to vary the terms of a testamentary Foundation. In the monumental work of Franciscus Maria Pitonius, an "*advocatus Romanus*" with an evidently extensive practice before the Roman Rota, published in Parma in 1719, and entitled:

> "De Controversiis Patronorum, necnon ab Eis Praesentatorum ad Beneficia et Capellanias quascunque, et alia Relicta Pia" ("Concerning the controversies of Patrons as well as of those presented by them to Benefices and Chaplaincies of whatever kind and to other Pious Endowments"):

it is said, in Allegatio XXXIII, n. 37 (Tom. 1, p. 275),

> "Neque potuisset Episcopus per ejus sententiam etiam expressam institutionem praeferentem alte-

rare qualitatem dictae Capellaniae contra voluntatem Fundatricis in praejudicium eorum quibus ejus vigore competit jus";

which may be translated as follows:

"Nor can the Bishop, even by his own express decree conferring institution, alter the quality of such a chaplaincy against the will of the Foundress and to the prejudice of those to whom the right pertains by its own force."

In regard to the Chaplaincy there discussed, it was held that it was not required to be held by a priest, because the obligation to say masses was not coupled with a clause requiring the Chaplain to do so in his own person ("nisi etiam concurrat obligatio celebrandi cum clausula *per se ipsum*"). The absence of such a requirement in the Foundation under consideration here has already been noted (*supra*, p. 21).

The Revision of 1918 in like manner recognizes the sanctity of conditions and limitations attached to benefices, once they have been duly approved and accepted by the competent ecclesiastical authorities.

See Canon 1417 as follows:—

"§1. In limine fundationis fundator potest, de consensu Ordinarii, conditiones etiam iuri communi contrarias apponere, dummodo sint honestae et naturae beneficii ne repugnent.

§2. Conditiones semel admissae supprimi aut immutari ab Ordinario loci valide nequeunt, nisi agatur de mutationibus Ecclesiae favorabilibus et accedat consensus ipsius fundatoris, vel, si agatur de iure patronatus, patroni."

TRANSLATION.

"§1. In the inception of the Foundation the Founder may, with the consent of the Ordinary, impose conditions even contrary to common law provided they are honorable and not inconsistent with the nature of the benefice.

§2. Conditions once admitted cannot lawfully be abolished or changed by the Ordinary of the place unless it is a matter of changes favorable to the Church and the consent of the Founder himself is procured, or of the patron, if it is a matter of the right of patronage."

This Canon, which does not appear to have been considered by the Court below, should be regarded as limiting the effect of the other changes of 1918 and preventing their application to a Foundation already existing in such a way as to abolish or change the conditions attached to it at its inception and at that time duly accepted and admitted by the competent ecclesiastical authorities.

POINT III.

Appeal to the Pope was not a necessary condition precedent to recourse to the Civil Courts.

The highest ecclesiastical authority within the territorial jurisdiction had definitely and finally acted against the plaintiff's claim. The Holy See itself had expressly authorized in general terms the diversion of the income of such foundations to other purposes (Rec., pp. 98, 99). Whatever may be the rule as to purely ecclesiastical matters, it would be unreasonable and inequitable to require a

claimant of property rights, such as this plaintiff, to go through the formality of an appeal to the highest ecclesiastical tribunal at Rome, outside of the territorial jurisdiction, before having recourse to the local Civil Courts for the enforcement of his property rights. The Trial Court correctly held that in the circumstances of this case an appeal to the Pope under Canon 1465 "would have been a useless proceeding" and was not a condition precedent to "redress . . . through the courts of justice" (Rec., pp. 274, 275), and the contrary view of the Supreme Court (Rec., pp. 330, 347) was erroneous. The Pope had already put himself on record; he was beyond the jurisdiction of the local courts; and he too, like the Archbishop, would have been sitting in judgment in his own cause.

By analogy a similar rule should apply as in the case of confiscatory legislation or regulation by one of the American States. It is not required that *all* remedies in the State Tribunals be exhausted before applying for relief to the Federal Courts.

See

Prendergast vs. *New York Telephone Co.*, 262 U. S. 43, 48;

Banton vs. *Belt Line Ry.*, 268 U. S. 413, 417.

Here plaintiff had exhausted his remedies within the jurisdiction and that should have been regarded as sufficient, without imposing upon him "the trouble and expense of appealing to the Pope at Rome" (Rec., p. 274).

POINT IV.

If a class suit be deemed necessary, this suit can and should be so treated.

It appears from the Record that there is only one person other than the plaintiff who might claim to be entitled to the benefit of the Chaplaincy under the Will of the Foundress and that he has expressly disclaimed any rights that he may have (Rec., pp. 372, 265, 136). The plaintiff therefore embodies in his own person the "class" entitled to relief and he is also the nearest in relationship (Rec., pp. 265, 327, 328). To guard against any possible unjust result, leave might be granted, upon a reversal and remand, to all other descendants of the Foundress to come in as co-plaintiffs, upon equitable terms, and assert their claims, if any, to share in the benefit of the judgment and their right to join in preventing the diversion of the income of the Foundation. This would be in accord with the spirit of the prevailing opinion (Rec., p. 340).

The litigation has been pending for four years, all of the controversial facts have been determined, an accounting has been had, the amount of the accumulated income from the Foundation which has *not* been applied in accordance with the Will has been adjudged, and the correctness of the figures, which were furnished by the defendant, is unchallenged. Whether the plaintiff is solely entitled or whether some or all of the other descendants of the Foundress should have an opportunity to come in and assert any claims that they may have, this result of the litigation should be preserved, and the defendant should no longer be permitted to retain funds to which in any event he is not entitled, officially or individually, or to continue to

apply them to other uses, even if "more pious", as he is apparently doing in many other cases as well as in this (Rec., pp. 112, 131). The Court below recognized this in principle (Rec., pp. 340, 398), but its judgment places upon the "class" the burden of doing all over again that which has already been done, whether for them collectively or for himself individually, by the plaintiff.

It will not injure the defendant to spare him the expense of a repetition of the litigation under a different title and it will obviously benefit the plaintiff and any others who may be interested with him to avoid such delay and circumlocution.

There is good American precedent for permitting a suit originally brought by one party, solely on his own behalf, to be converted by order of Court into a class suit for the benefit of all similarly situated, and affording them all an opportunity to come in and assert their claims.

See

Williams' Admr. vs. *Newman,* 93 Va. 719, 724;
Neeley vs. *Jones,* 16 W. Va. 625, 648.

This Court has always regarded class suits as properly subject to great elasticity of treatment.

See

Smith vs. *Swormstedt,* 16 How. 288;
Stewart vs. *Dunham,* 115 U. S. 61;
Supreme Tribe of Ben Hur vs. *Cauble,* 255 U. S. 356.

The provisions of the Philippine Code of Civil Procedure are broad enough to permit whatever amendments may be necessary or appropriate to bring about the result contemplated.

The general subject is regulated by §§ 109, 110, as follows:

> "§109. An immaterial variance between the allegation in a pleading and the proof shall be disregarded and the facts found according to the evidence, and the pleading shall be forthwith amended in accordance with the facts found, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a variance is material and that a party has been misled, the Court shall not dismiss the action by reason of the variance, but shall, upon such terms as may be just, order the pleadings to be forthwith amended in accordance with the facts, and determine the action upon the actual facts as established. The amendments provided in this section may be made either in the Court of First Instance or in the Supreme Court, at any stage of the action.
>
> §110. The Court shall, in furtherance of justice and on such terms, if any, as may be proper, allow a party to amend any pleading or proceeding and at any stage of the action in either the Court of First Instance or Surpeme Court, by adding or striking out the name of any party either plaintiff or defendant, or by correcting a mistake in the name of a party, or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner."

Under the foregoing Sections amendments may be allowed by the Supreme Court on appeal from the Court of First Instance.

See

De la Rosa vs. *Arenas*, 7 Phil. Rep. 556;

Bismorte vs. *Aldecoa & Co.*, 17 Phil. Rep. 480;
Harty vs. *Macabuhay*, 39 Phil. Rep. 495.

The joinder of new parties on either side of the case is also permitted.

> "§121. A person may at any period of a trial, upon motion be permitted by the Court to intervene in an action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. Such intervening party may be permitted to join the plaintiff in claiming what is sought by the claimant, or to unite with the defendant in resisting the claims of the plaintiff, or to demand anything adverse to both the plaintiff and defendant."

Such joinder may be required by the Court of its own motion:

> "§122. The Court may determine any controversy between parties before it if it can be done without prejudice to the right of others or by preserving their rights for future action; but when a complete determination of the controversy can not be had without the presence of other parties, the Court must order them to be brought in, and to that end may order amended or supplemental pleadings, or a cross complaint, to be filed and summons therein to be duly issued and served."

Since in this case there was an answer and trial on the merits the Court may award any relief which may be appropriate, consistent with the Complaint and within the issues.

> "§126. The relief granted to the plaintiff, if there be no answer, can not exceed that which he shall have demanded in his complaint, but, in any other case,

the Court may grant him any relief consistent with the case made by the complaint and embraced within the issue, requiring the necessary amendments."

On behalf of the plaintiff, it is submitted that he is entitled to the relief awarded to him by the Trial Court, namely, to be instituted as Chaplain, but without sacerdotal functions until he is qualified to perform them, and to be paid the accumulated income. Provision should also be made for the income accrued since the date of the account and to accrue in future.

If this Court considers that *mandamus* should not issue to require plaintiff's induction as Chaplain, but that he is entitled to the income of the Foundation, this relief might be afforded by affirming only so much of the decision of the Court of First Instance as awards a money judgment.

If this Court is of opinion that the plaintiff is not, or may not be, the only descendant of the Foundress entitled to relief, then upon a remand the Court below should be directed to treat this a class suit on behalf of all who may claim and prove an interest, as indicated in the dissenting opinion of Mr. Justice Johns (Rec., p. 390), and require or permit such amendments as may be appropriate to this end.

Conclusion.

The judgment of the Supreme Court of the Philippine Islands should be reversed and the cause remanded with instructions

(a) to affirm the judgment of the Court of First Instance in whole or in part, or

(b) to treat this as a class suit and take such further proceedings to this end as may be appropriate.

Respectfully submitted this 17th day of December, 1928.

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CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1928.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 226. 6

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* Leon Gonzalez,

Petitioner,

v.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,

Respondent.

MEMORANDUM IN REPLY FOR PETITIONER.

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Supreme Court of the United States

OCTOBER TERM, 1928.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 226.

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* Leon Gonzalez,
Petitioner,

v.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,
Respondent.

MEMORANDUM IN REPLY FOR PETITIONER.

The exhaustive Brief of the learned counsel for Respondent presents the case in such a manner as to make a short Memorandum in Reply both appropriate and necessary. For the sake of brevity, such Reply will be presented under a series of specific headings, each dealing with some particular question involved or some specific phase of the case or aspect of the argument. No attempt will be made to cover the entire case in this Reply, and the absence of mention of any particular point or argument in Respondent's Brief is not to be taken as an admission of its validity, but rather as indicating a belief that in that respect the subject has been sufficiently dealt with in Petitioner's main Brief.

Respondent's counsel endeavors to find "instances of errors and omissions of fact in plaintiff's Brief" (Respondent's Brief, p. 27). It is submitted that none of the "instances" constitutes either an error of fact or an omission of fact. If meticulous criticism is in order, it may be remarked that the translations contained in the Appendix to Respondent's Brief of Canons 108, 976, 1364 and 1442 (pp. 10, 11, 12) are neither accurate nor complete, and attention is invited to the extraordinary translation of "*litterati et idonei*" as "lettered and filled" (possibly a misprint for "fitted") and of "*turpis ambitionis*" as "the torpitude of ambition" (App., p. 31).

Some confusion may be possibly caused by the fact that the present *Codex Juris Canonici* is sometimes referred to as the Revision of 1917 and at other times as that of 1918. This is explained by the fact that it was promulgated in 1917, to become effective on May 19th, 1918. In Petitioner's Brief and in the Opinions of the Court below it is referred to as the Revision of 1918. The Respondent usually refers to it as the Code of 1917. It is assuredly a monumental work, and it is unfortunate that, although a part of it is available in an English translation, that portion of it dealing with Benefices appears not to have been published in English up to the present time.

After the filing of the Record in this court, Adelaida Gonzalez, the mother and guardian *ad litem* of the Petitioner, died, and Leon Gonzalez, an uncle, was appointed guardian *ad litem* by the Court of First Instance in Manila. Thereafter, by order of this Court, made on January 16, 1929, he was duly substituted here, and the title of the cause amended accordingly.

I. The Fundamental Issues Involved.

Respondent's counsel subtly seeks to divert the attention of the Court from the underlying questions presented by devoting great erudition and elaborate dialectic to certain of the less crucial aspects of the case and taking largely for granted the basic questions now before this Court. As presented to this Court, the *crux* of the case is not whether the Petitioner is entitled to a writ of mandamus requiring the Respondent to institute him as Chaplain, but (1) whether the Petitioner, either individually or as the representative of a Class, is entitled to some relief in respect to the balance of the income of the Foundation, after payment for the prescribed Masses, and (2) whether the Respondent, with or without the authority of the Holy See, is entitled to devote such surplus income to the general purposes of the Church, educational or otherwise, or should be required to account for it to the descendants of the Foundress and apply it to the purposes of the Foundation.

While full consideration of the facts is necessary to a proper disposition of this question, it remains fundamentally a question of law. The effort of Respondent's Counsel to inject questions of fact into the case (Respondent's Brief, p. 27) finds no support in the Opinions below or in the Record. The Supreme Court of the Philippine Islands did not undertake to disregard, reverse or set aside any of the findings of fact of the Trial Court. The concurring Opinion of Mr. Justice Malcolm expressly states: "There can be no dispute on any material fact" (Rec., p. 343), and neither the Opinion of Mr. Justice Street nor the dissenting Opinion of Mr. Justice Johns refers to any matter of fact as being in controversy.

It was not intended to suggest by Petitioner's Brief that Respondent had not caused the Masses provided for by the Will to be said, although the testimony on this subject was somewhat vague and inconclusive (Rec., pp. 115-117), or that the balance of the income, manifestly constituting the bulk thereof, had been personally appropriated by the Respondent. On the contrary, Petitioner's Brief specifically referred to p. 324 of the Record, where it is stated that

> "all of the income thus received, less the expenses of administration and cost of the Masses, has been applied to the purposes of education, beneficence and charity."

Respondent also seeks to raise a question of fact as to the qualifications required of Chaplains prior to 1918. The Court below found no such difficulty. In the Opinion of Mr. Justice Street it is stated, at p. 324 of the Record, that since the Council of Trent

> "no person who has received the first tonsure or who has already been ordained in minority is eligible to a benefice before his fourteenth year",

and that

> "with this exception there seems to have been no ecclesiastical law or ordinance of the Church in force at the time the Chaplaincy in question was founded, prescribing ecclesiastical qualifications for incumbents of the office of Chaplain",

and again, at p. 336:

> "Under the law of the Church as it stood when this Chaplaincy was created, no ecclesiastical qualifications were required in a candidate for appointment to the office of Chaplain."

As to the individual qualifications of Petitioner, there was no evidence controverting the testimony that he possesses

> "more learning and intelligence than any previous Chaplain at the time of his appointment",

as summed up in the dissenting Opinion of Mr. Justice Johns (Rec., p. 373). In the concurring Opinion of Mr. Justice Malcolm it is expressly stated:

> "Broadly speaking, Raul Rogerio Gonzalez met the requirements of the Church before the Canon Law of 1918 went into effect" (Rec., p. 347),

as already quoted in Petitioner's Brief, p. 8.

The Catholic Encyclopedia, quoted by Respondent (Respondent's Brief, App. p. 38), states:

> "Before the Council of Trent a simple benefice could lawfully be conferred on a cleric as early as his seventh year."

That one could be a "cleric" when just past his sixth birthday shows that no great degree of learning was requisite, and even at thirteen no very profound study of "Christian Doctrine" or any other subject could have been accomplished.

That even after the Council of Trent the knowledge of "Christian Doctrine", upon which Respondent lays so much stress (Respondent's Brief, p. 54) as a qualification for appointment to a Chaplaincy, was not required to be very extensive also appears from the Catholic Encyclopedia as further quoted in the Appendix to Respondent's Brief. Any child brought up in a Catholic household would presumably have been instructed in "The Apostles' Creed, the

Sacraments; the Ten Commandments; and the Lord's Prayer" (App., p. 49). All that was required for the tonsure was that "the recipient must have learnt the rudiments of the Faith and be able to read and write" (App., p. 51).

That the "first tonsure" might be given as an incident to appointment to a Benefice appears from the quotation from the Papal Bull of May 13, 1723, found in the Opinion of Dr. Bustamente at p. 23 of the Appendix to Respondent's Brief, prescribing that

> "none of the Archbishops and Bishops of the Kingdom of Spain shall admit in future for the first tonsure *any except those to whom an ecclesiastical Benefice has to be conferred immediately,* or to those of whom it is evident that they are engaged in studies so that they appear to be already on the way to receive minor orders and later major orders; or, finally to those they deem it advisable to delegate to the service and ministry of some church."

Prior to the Revision of 1918, therefore, any objection as to lack of tonsure could have been cured coincidentally with the appointment.

Only these simple requirements could have been contemplated by the Foundress. Her descendants should not be deprived of the support which she intended to provide for them by reason of any higher standard subsequently set for the performance of functions which they are not called upon to perform in their own persons.

II. The Nature of the Chaplaincy Involved.

Petitioner does not question that under the language of the Will and the Deed of Foundation the Chaplaincy here in question was of the variety known as "*colativa*", but the authorities assembled by Respondent's counsel with

such learning and industry in the Appendix to his Brief show that the definition of this term is subject to considerable variation. According to the definition quoted at p. 4 from the Catholic Encyclopedia the test is "that the bishop is to erect the foundation into a benefice". According to Taunton's "Law of the Church" (Appendix, p. 33):

> "A collative benefice is one that is conferred at the absolute and free will of the prelate."

According to Alcubilla, as quoted on p. 6 of Respondent's Brief:

> "A collative Chaplaincy is that instituted with the intervention of the ecclesiastical authority and requires a title of ordination. • • • When the foundation calls for relatives of the founder • • • to enjoy the chaplaincy, the latter is called *colativa familiar;* when individuals of a certain family are not called to the possession, but the patron is authorized to appoint, then the Chaplaincy is called *colativa simple* or *gentilicia.*"

Here again another difference of definition is found, since the Catholic Encyclopedia, quoted in the Appendix at p. 42, says:—

> "Hereditary or family chaplaincies are those to which, by the will of the founder, the holder of the benefice is to be nominated by the testator's heirs or assigns."

Thus, according to one definition, in a collative family Chaplaincy the Bishop not only institutes, but nominates, while under another the Bishop's appointment is limited to those nominated *out of* a certain family, or by still another to those nominated *by* the appropriate member or members

of a certain family. The Canon Law is thus seen to present ambiguities and uncertainties no less than the Common Law.

Respondent's Counsel also contends that this Chaplaincy had no hereditary character (Respondent's Brief, pp. 46-48). The best answer to this may be found in the statement of the Rector or President of San Juan de Letran College that petitioner "is entitled to it, according to the Will of the deceased" (Rec., p. 58), and his testimony that there had been submitted to him "a family tree from which it appeared that the boy Raul Rogerio Gonzalez was the only legitimate heir to this Chaplaincy" (Rec., p. 221).

This Dominican Father, in 1922 Rector of the College of San Juan de Letran, and at the time of the trial Vice-Rector of the University of Santo Tomas at Manila (Rec., p. 211), called as a witness by the Respondent, may well be regarded as knowing more about the heritable quality of an ancient Chaplaincy in the Philippine Islands than even the learned counsel for the Respondent. Just what rights attach to such heirship and how they may be enforced or defeated are other questions which will be further discussed.

Respondent's Counsel also contends that the history of the Chaplaincy should be disregarded and the practical construction placed upon the instruments of foundation for a hundred years ignored (Respt.'s Brief, p. 50). But the very cases he cites hold that contemporaneous construction and long usage are properly resorted to when there is any doubt or uncertainty as to the terms or the construction of the original foundation. See especially *Attorney General* vs. *Rochester,* 5 DeG. M. & G. 797, at p. 822; *Drummond* vs. *Attorney General,* 2 H. L. Cases 837, at p. 861; *Attorney General* vs. *Trinity Church,* 91 Mass. 422, at p. 447.

It may be that hereditary rights in such a Foundation seem today somewhat anomalous, but it must be remembered that in the Philippine Islands when ceded to the United States there were more than vestigial traces of the Middle Ages, when Benefices of this nature were a favorite form of provision for younger sons and collateral relatives.

In the case at bar the original investigation by the Promotor Fiscal was largely to determine "that the said *congrua* (pension, living or maintenance) * * * be declared sufficient" (Rec., p. 52); that is to say, sufficient for the support of the Chaplain for whom, and for whose successors of her blood, the Foundress desired to provide.

In *City of Manila* vs. *Archbishop of Manila,* 36 Phil. Rep. 815, the ancient Chaplaincy there in suit was described as "still being administered" by the Archbishop "in accordance with the terms of said Will for the benefit of the real beneficiary as was intended by the original owner."

The details do not appear, but it is significant that it was recognized that after two hundred years there was still a "real beneficiary * * * intended by the original owner".

III. The Disposition of the So-called "Surplus" Income.

Respondent's counsel argues that the incumbent of a Benefice was entitled only to his reasonable support out of the income and that therefore the Respondent was justified in devoting the so-called "surplus" income of this Foundation to the general purposes of the Church. This is contrary to Respondent's own citations. Dr. Bustamente says (Appendix to Respondent's Brief, p. 25):—

> "In general, the proceeds of every ecclesiastical benefice should be received by the beneficiary who, in the first place, has to fulfill the obligations of such

benefice and attend later to what the Canonical Law calls his 'congrua'—that is his reasonable sustenance; in other words, the material needs or essentials of life of the chaplain.

The residue, if there be any, must be devoted *by the beneficiary* to pious uses".

So, in Taunton's "Law of the Church" quoted at p. 32 of the Appendix:

> "The benefice consists in the right to the income, not to the capital, which remains under the *dominium* of the Church. Hence the holder of a benefice has a direct *dominium* over the income or *fructus* and, although he may have private means, he can use it to provide the expenses of living in the manner which is considered honest and fitting. If anything remains over and above this the holder is bound to devote the superfluity of this benefit to the poor or to other pious uses".

In like manner in the Catholic Encyclopedia, quoted on p. 40 of the Appendix, it is said:

> "Formerly, this superfluous revenue could not be disposed of by Will, but a universal custom has long since authorized such testamentary disposal, provided it be made in favor of pious causes or of the poor. In fact in most places on account of the difficulty of distinguishing a cleric's patrimonial property from his beneficiary revenue, the right is recognized to dispose freely by will of all property."

Thus it is not for the ecclesiastical authorities to determine the application of the "surplus" income and to distribute it, but for the beneficiary himself, who is to be his own almoner.

In *Capellania de Tambobong* vs. *Cruz*, 9 Phil. Rep. 145, the Chaplaincy itself was held to be entitled to register its title to the property, notwithstanding the fact that

> "it would be impossible to apply to the saying of the Masses, provided for in the deed, the rents of all the lands belonging to the Capellania."

There is no suggestion that in that case the surplus was turned over to the general purposes of the Church.

IV. Discussion of Certain Authorities.

It would unduly expand this Memorandum to attempt to analyze and distinguish all of the many decisions and other authorities cited by Respondent's counsel. Some of them are cited in support of general propositions of law which are not in controversy, as, for example, that the heirs of the donor of a general public charity have no individual interest in the performance of its obligations and in general no right of reverter in the property. (Respt.'s Brief, p. 61). Some of them, it is submitted, have no relevance to the case at bar, as for example the cases on pp. 44 and 58 of the Brief, dealing with the administration of funds given generally and without limitation to churches or other bodies for their general corporate purposes, or with the *cy-pres* doctrine as applied to public charities having no private beneficiaries of the Founder's kin, or with the rights of a clergyman to his stipend, arising merely out of his ecclesiastical *status*, without reference to any specific endowment or trust relation.

As to certain decisions, however, on which Respondent's counsel lays particular emphasis, a brief discussion is appropriate.

Respondent's counsel invokes *Shepard* vs. *Barkley*, 247 U. S. 1 (Respt.'s Brief, pp. 43, 45), but this decision is by no means in point, as more fully appears from the reports of it in the Courts below. In the Circuit Court of Appeals it is reported under the title of *Duvall* vs. *Synod of Kansas of Presbyterian Church*, 222 Fed. 669, and the Opinion of the District Court is there expressly approved. In the District Court it is reported under the title of *Barkley* vs. *Hayes*, 208 Fed. 319, and it is said at p. 327:—

> "As we have seen, the property in dispute was acquired for the *general use* of the body for religious purposes *with no other limitation.*"

In the case at bar, the property was not acquired by the Church for general religious purposes, but for the specific purpose of endowing a Chaplaincy for the material support of successive members of a certain family and for the spiritual benefit of the Masses to be said for the souls of certain departed members of such family.

Respondent's counsel quotes at length (Respt.'s Brief, p. 44) from *Jones, Bishop of Porto Rico* vs. *Registrar of Property*, 18 Porto Rico, 124. What was actually held in that case was that the cancellation by the Bishop of an annuity in favor of a nun was entitled to registry because the annuity, once recorded in the name of the nun "becomes *ipso jure* recorded in the name of the Convent," under the well established rule of Canon Law that all the property of a "religious", both present and future, vests in his or her Monastery or Convent.

Respondent's counsel quotes from *Gonzalez* vs. *Harty*, 32 Phil. Rep. 328 (Respondent's Brief, pp. 37, 38), also cited by Petitioner (Petitioner's Brief, pp. 15, 16). It is to be noted that only two of the other Justices concurred

in the Opinion and that one-half of the Court (three Justices) concurred in the result, solely upon the ground that the plaintiff was concluded by the receipt which he had given.

Respondent's counsel (Respondent's Brief, pp. 21, 22) endeavors to make light of the registration of the property constituting the Foundation of the Chaplaincy in the name of the Archbishop. He fails to take into account the requirements of the Land Registration Act in force in the Philippine Islands. That statute requires in §40 that the decree of registration

> "shall set forth the estate of the owner and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments and other encumbrances".

§65 of the Act also specifically provides for the insertion in the registration of a reference to any trust to which the property may be subject.

The effect of these provisions is stated in the treatise on "Land Registration in the Philippine Islands", by Enrique Altavas, published in Manila in 1923, at p. 80, Par. 91, as follows:—

> "As to encumbrances or rights, they must be stated in the decree for the protection of the interested parties."

The reference in the Registry certificate (Rec., p. 68) "to such of the encumbrances mentioned in Article 39 of said law as may be subsisting" falls far short of complying with these statutory requirements. The "encumbrances mentioned in Article 39," are (1) certain liens, claims or rights under the laws or Constitution of the United States

or of the Philippine Islands; (2) certain taxes, and (3) certain easements for public highways. Aside from these, it is prescribed that a person receiving a certificate of title for value in good faith "shall hold the same free of all encumbrances except those noted in said certificate." If, for any legitimate reasons of ecclesiastical procedure, or otherwise, it was deemed proper to register the property in the name of the Archbishop rather than in the name of the Chaplaincy itself, the registration should at least have shown upon its face that the property was devoted to this particular use and was not a part of the properties dedicated to the general use of the Church for religious purposes, as was the case in *Shepard* vs. *Barkley, supra,* and also in *Mormon Church* vs. *United States,* 136 U. S. 1, cited by Respondent's counsel at pages 57 and 60 of his Brief.

Certain of the most important and significant authorities and arguments relied on by Petitioner are wholly ignored in Respondent's Brief, from which it may be inferred that Respondent's counsel finds no answer to them. Notable among these omissions are the following:—

(a) The Free Church Case (Petitioner's Brief, pp. 19, 20), vindicating the power of the Civil Courts to prevent the diversion of ecclesiastical endowments from the specific purposes for which they were originally furnished.

(b) The distinction between a Chaplaincy in which the Chaplain was required by the terms of the Foundation to say Masses *"per se ipsum"* and those in which this requirement was not prescribed or was expressly dispensed with by the Founder, as discussed in the quotation from Pitonius, *De Controversiis Patronorum* (Petitioner's Brief, pp. 23, 24, where the citation should be to Vol. 1, p. 273, not 275).

(c) The effect of the present Canon 1417 in preserving the effect of conditions originally imposed by the Founder "even contrary to the common law" (Petitioner's Brief, pp. 24, 25).

(d) The fact that the appeal to Rome, upon which Respondent's Counsel lays so much stress, would have taken the case outside of the territorial jurisdiction of the local Courts and of the United States (See Petitioner's Brief, pp. 25, 26).

Whatever may have been the local law on this point before the cession, it is well established in English and American jurisprudence, the influence of which has been increasingly felt in the Philippines since the American occupation, that appeals to any tribunal outside the national jurisdiction are contrary to the national policy. This has been true since "the two statutes of *Praemunire*, which attempted to check, in the interests of patrons and of the State, the abuses of Papal patronage" (Holdsworth's History of English Law, Vol. I, p. 585). These two statutes (27 Edward III. St. 1, c. 1, and 15 Richard II, c. 5) were long prior to the separation of the Church of England from the Church of Rome. Professor Holdsworth (Vol. I, p. 587) says "The first Statute of *Praemunire* punished those who drew 'any out of the Realm in Plea whereof the cognizance pertaineth to the King's Court'." The reason is plain. If the local ecclesiastical tribunal acts in derogation of a civil right, the local civil courts may grant any redress which may be proper. But the local civil courts cannot reach by their process a higher ecclesiastical tribunal outside of their jurisdiction and of the national jurisdiction.

It is significant that in the article in Alcubilla's Diccionario on "*Jurisdiccion Eclesiastica*" (Vol. 6, p. 731) the

enumeration of ecclesiastical courts includes a court held by or under the authority of the Papal Nuncio—the *"Tribunal de la Rota de la Nunciatura"*,—but makes no mention of any further appellate recourse.

In the cases of *The State ex rel. McNeill* vs. *Bibb Street Church,* 84 Ala. 23 and *German Reformed Church* vs. *Seibert,* 3 Pa. St. 282, cited at page 45 of Respondent's Brief, there is no suggestion that the appellate tribunals of the Church were outside of the jurisdiction of the Court.

V. The Importance of This Case.

Respondent's learned counsel does not exaggerate the importance of this case. He states in his Brief (p. 31) and it appears from the Record that there are about 190 other Chaplaincies of this general nature in the Philippine Islands. It is highly probable that many of them have been kept vacant as this one has and their revenues applied to the general uses of the Church. The question before this Court is not only whether Raul Rogerio Gonzalez is to be appointed to this Chaplaincy or is to receive the whole or any part of its revenues, past or future, but also whether as a descendant and representative of the original Foundress he is entitled, and in like manner whether the descendants of other Founders similarly situated are entitled, to require through the Civil Courts that the revenues of the Foundations be applied to the specific purposes contemplated by the Founders, or whether the Church is at liberty to deal with these revenues in its absolute and uncontrolled discretion. This is a typical case; the facts are fully before the Court, and whether as an individual suit or as a class suit this litigation offers ample opportunity for this Court to lay down rules which will

enable the Philippine Courts to administer justice in this and similar controversies. All great ecclesiastical organizations of whatever form or Faith have a tendency, demonstrated by the whole course of history, to absorb property and to deal with it as they see fit. Where they receive property for their general purposes it is not for the Civil Courts to determine how they shall employ it or otherwise to control them in matters purely ecclesiastical or spiritual, but where property has been entrusted to the possession and control of ecclesiastical authorities for a specific and definite purpose it is within the power and jurisdiction of the Civil Courts to require that such purpose be fulfilled.

True it is that in the case at Bar this property was in 1820 "segregated from temporal properties and transferred to the spiritual properties of this Archbishopric" (Rec., p. 53) and made "subject to the ecclesiastical forum and jurisdiction" (Rec., p. 57). It does not appear whether in 1820 in the Philippine Islands there were ecclesiastical Courts having jurisdiction to determine questions relating to encumbrances upon real property or trust relations attached thereto. At that time Church and State were one and it may well be that there were ecclesiastical Courts with such powers, incidental to their general jurisdiction over Benefices. It will hardly be contended that at the present time in any place under the jurisdiction of the United States any tribunal other than the regular Civil Courts can determine actual property rights by its decree. As was said in *United States* vs. *Smith,* 39 Phil. Rep. 533, 536:

> "It would thus be preposterous to suppose that, with a change of sovereignty which has caused a complete separation of Church and State and the abolition of all special privileges for a particular

> religious sect, the Courts would sanction any higher prerogatives for a Church official than they would for any citizen."

Unless such a suit as this can be maintained and some appropriate relief afforded therein, the parties interested in enforcing the performance of the obligations arising out of these ancient Foundations are wholly without remedy.

Spain met the problem, as it affected the Peninsula, by disamortizing these Foundations and turning the properties back to those most nearly standing in the shoes of the Founders (Petitioner's Brief, pp. 20, 21). They were not handed over to the Church for its general use.

The problem in the Philippines arising out of the great accumulations of agricultural lands in the hands of the monastic orders was met by the purchase of the "Friar Lands" by the United States at a cost of some $7,000,000 (See Administration of Philippine Lands; Report by the Committee on Insular Affairs, House of Representatives, 61st Congress, 3rd Sess., to accompany House Resolution 795. Government Printing Office, 1911, Vol. I, pp. xxiii, xxiv).

The problems arising out of these Chaplaincies can apparently be dealt with only through the Courts, and this case paves the way for their fair and just solution.

Conclusion.

The judgment under review should be reversed and appropriate relief afforded as more fully set forth in Petitioner's Brief.

Respectfully submitted this 6th day of April, 1929.

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CHARLES ELMORE CROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1928.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. [redacted] 6

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* Leon Gonzalez,

Petitioner,

v.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,

Respondent.

BRIEF ON BEHALF OF RESPONDENT.

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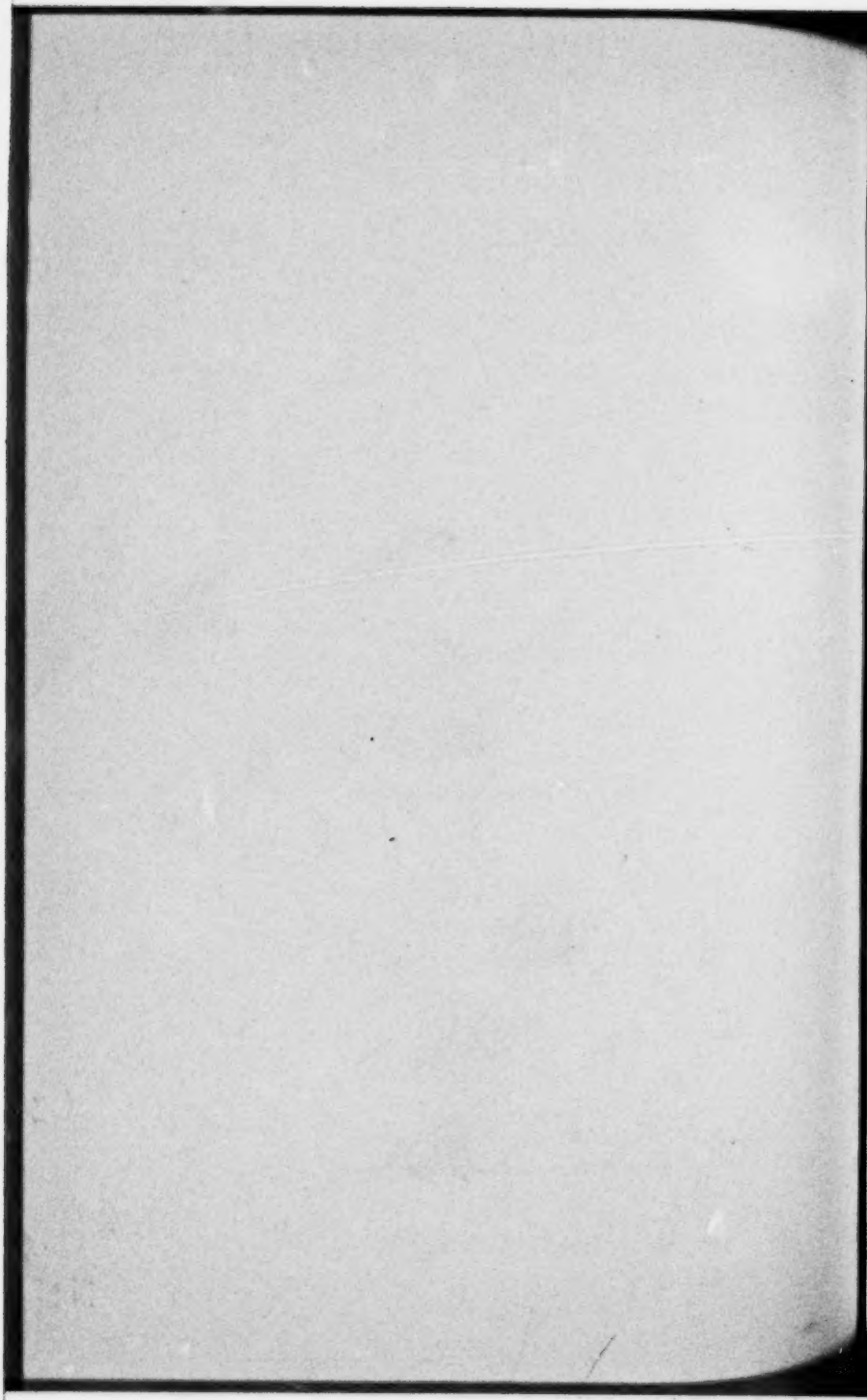
The Roman Catholic Archbishop of Manila.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.



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Supreme Court of the United States

OCTOBER TERM—1928.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 226.

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* Leon Gonzalez,

Petitioner,

v.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,

Respondent.

BRIEF ON BEHALF OF RESPONDENT.

CERTIORARI to a judgment of the Supreme Court of the Philippine Islands, which reversed a judgment of the Court of First Instance of Manila, the court of original jurisdiction, in favor of the plaintiff, the above named petitioner, Raul Rogerio Gonzalez (hereinafter called "plaintiff"), against the defendant as a corporation sole, viz., The Roman Catholic Archbishop of Manila (hereinafter called "respondent" or "defendant"). As the statement of the case in the brief filed on behalf of the plaintiff does not contain all that is material to the consideration of the questions presented, and as the rule of this court in regard to briefs cannot be complied with by referring the court for material facts to the opinions below, as is done in such brief, it has been deemed necessary in the present brief on behalf of the respondent to state the case fully, but as concisely as practicable. It is alleged in plaintiff's brief that the opinions

below state the facts and present both sides of the case fully and fairly; but, on the contrary, in the opinion of defendant's counsel, none of them is full or contains all the material facts, and some inferences or conclusions of fact therein are quite unwarranted and clearly erroneous. Under these circumstances, it is proper for the court to examine the record and determine the facts for itself. *Strong* v. *Repide,* 213 U. S. 419, 429; *Thomson Co.* v. *Ford Motor Co.,* 265 U. S. 445, 447.

In the appendix to this brief will be found definitions of various canonical terms, Spanish words, etc., as well as the pertinent provisions of the Codex Juris Canonici of 1917, with the English translation in a parallel column, and extracts from authoritative writers on Canon Law, etc. There will also be found a memorandum or review of the Spanish law in force in and prior to 1898, prepared by the well-known jurist Dr. Antonio S. de Bustamante, of Havana, Cuba. The court will take judicial notice of the Spanish law so far as it affects the Philippine Islands. *Ponce* v. *Roman Catholic Church,* 210 U. S. 296, 309. The plaintiff contends that the Code of Canon Law of 1917 in certain sections constitutes a law impairing his treaty rights and the obligation of an alleged contract which he is legally entitled to enforce in a civil court of the United States for his personal benefit.

The judgment of the Court of First Instance of Manila, which was reversed by the Supreme Court of the Philippine Islands, ordered (a) that the defendant as the Roman Catholic Archbishop of Manila, forthwith appoint the plaintiff as a chaplain of the Roman Catholic Church under a chaplaincy founded in 1820; (b) that the defendant pay to the plaintiff the sum of 173,725 pesos, being the rentals and income of the property of such chaplaincy from January 1,

1911, to December 31, 1925, less certain expenses, and further pay to the plaintiff, through his guardian or guardian *ad litem,* from the date of his appointment as chaplain the net income of such property from time to time as collected; (c) that any legal rights of the plaintiff with reference to the cancellation of a Torrens certificate of title obtained by the defendant covering the property of the chaplaincy be reserved for proceedings before another court having exclusive jurisdiction, and (d) that, pending the final determination of the action, the defendant allow and pay to the plaintiff out of the accumulated funds of the chaplaincy for his maintenance, education and legal expenses a pension of 1,000 pesos a month (Record pp. 292-4). The legal value of a gold peso is fixed by Act of Congress "at the rate of one dollar for two pesos", and hence the peso is to be taken as worth fifty cents of the legal money of the United States (32 Stat. 952).

This judgment of the Court of First Instance of Manila was reversed by the Supreme Court of the Philippine Islands, and the latter decision of reversal is now before this court for review.

The writ of certiorari was granted upon default of the respondent.

STATEMENT OF THE CASE.

The controversy presented to this court for review under the writ of certiorari arises with relation to a chaplaincy of the Roman Catholic Church founded in 1820 in pursuance of the will of Doña Petronila de Guzman, dated March 13, 1816 (R. 32). The chaplaincy was established by the representative authority of the Roman Catholic Church on May 12, 1820 (R. 56). The dates of the death of the testatrix and of the admission of her will to probate are

not contained in the record, but were prior to February 29, 1820 (R. 42). The plaintiff Raul Rogerio Gonzalez is an infant born September 16, 1912, and was in his tenth year of age when presented to the defendant, Roman Catholic Archbishop of Manila, for appointment as a chaplain of the Roman Catholic Church (R. 36, 37).

The pertinent provisions of the will as recited in the stipulation of facts are contained in the ninth, tenth and eleventh items or articles thereof, which read as follows (R. 33-34):

> "Ninth Item:—I declare and charge that the new house situated in this said town and bounded by this house of my residence toward the right of its exit, which between myself and my deceased sister, Da. Vicenta de Guzman, we have constructed with our own money, the expenses of which amount to one thousand six hundred pesos without including the value of the lot on which it is erected and I charge my executor to constitute said house into a collative chaplaincy, the foundation of which they shall effect immediately after my death, electing for chaplain D. Esteban de Guzman, legitimate son of my grandson, Dn. Jose Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian of San Juan de Letran, who should be an orphan *mestizo*, native of this said town, and I request the Father chaplain to celebrate sixty masses annually, which should be said in the churches of the City of Manila or in those of its vicinities, and in privileged altars, in behalf of the souls of my father, Dn. Tomas de Guzman, and of my mother, Dña. Sebastiana de Jesus, and my brothers and sisters, and for me, the testatrix, after my days.

"Tenth Item:—It is my will that for patron of said chaplaincy my executors name the Father President of the College of San Juan de Letran.

"Eleventh Item:—I appoint my first executor as administrator of the chaplaincy which shall be founded on the house referred to, during the minority of said chaplain."

The will was in Spanish, and the translation quoted above was accepted below as accurate. In the opinion of the trial court, however, the original Spanish of part of the language of the textatrix in the ninth item is quoted (R. 275), and this quotation is printed below in a column parallel to the English translation for the convenience of the court, viz.:

English translation (R. 240).	Spanish (R. 275).
—electing for chaplain D. Esteban de Guzman, legitimate son of my grandson Dn. Jose Telesforo de Guzman, and in his default, the nearest relative, and in default of the latter, a collegian of San Juan de Letran, who should be an orphan *mestizo*, native of this said town.	—elegiendo por capellan a Don Esteban de Guzman, hijo legitimo de mi nieto Don Jose Telesforo de Guzman, y falta de este el pariente mas cercano y por defecto de este deberá ser un colegial de San Juan de Letran y sea mestizo huerfano, natural de este dicho pueblo.

In the practice of the Roman Catholic Church, chaplaincies are generally divided into two classes, known as lay and collative or ecclesiastical chaplaincies. In the well-known work of Alcubilla, entitled "Diccionario de la Ad-

ministracion Española",* (fifth edition, published in 1892, vol. ii, p. 259), and generally recognized as authoritative, these chaplaincies were defined as follows (R. 360-1):

> "A *laical chaplaincy* is that instituted without the intervention of the ecclesiastical authority: it does not require a title in order to be ordained, and the possessor is only obligated to cause to be celebrated, or to celebrate, if he is a priest, a certain number of masses in accordance with the foundation. The laical or *mercenary* chaplaincies are not subject to the ecclesiastical authority, which, with regard thereto, has no other right than to investigate if the obligations are fulfilled; and this is one of the characteristics which most distinguish the said chaplaincies from the collative chapplaincies; . . .
>
> "A *collative chaplaincy* is that instituted with the intervention of the ecclesiastical authority, and requires a title of ordination. It is called ecclesiastical because it is in the form of ecclesiastical benefice, and it is proper for the Bishop to confer it. When the foundation calls for relatives of the founder or of the persons whom he designated as trunk, to enjoy the chaplaincy, the latter is called *colativa familiar;* when individuals of a certain family are not called to the possession but the patron is authorized to appoint, then the chaplaincy is called *colativa simple* or *gentilicia.*"

And whether the chaplaincy now in question be called "colativa familiar" or "colativa simple or gentilicia", the intervention and action of the ecclesiastical authority were al-

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* Cited by this court in *Ponce* v. *Roman Catholic Church*, 210 U. S. 296, 315-16. See also other definitions in appendix.

ways necessary "and the confirmation of the bishop [was] of absolute necessity" (The Catholic Encyclopedia, vol. iii, p. 580). The property of similar chaplaincies, although disamortized (that is, released from mortmain) in Spain in and by legislation beginning in 1820 and continuing until 1867, was left undisturbed by legislation, in the Philippine Islands. See plaintiff's brief, pp. 18 and 20-21, and *Catholic Church* v. *Municipality of Badoc,* 10 Phil. Rep. 659, 671.

Plaintiff's brief (p. 17) concedes the accuracy of these definitions, but proceeds to assert (p. 18) that "The ecclesiastical character of the incumbent from time to time appears to have been a minor consideration." On the contrary it is one of the vital and outstanding features of a collative or ecclesiastical, as distinguished from a laical, chaplaincy, and this distinction lies at the very threshold of the whole case.

The stipulation of facts establishes (R. 42-58) that the testamentary executor of the deceased testatrix, such executor being the father of the first chaplain designated by the testatrix, petitioned the Roman Catholic Archbishop of Manila under date of April 24, 1820, to establish a *collative* chaplaincy in accordance with the provisions of the will above quoted, representing, among other things, that the chaplain so designated by the testatrix, namely, his own son, Esteban Sixto de Guzman, had been solemnly baptized on August 8, 1806, being then four days old (R. 47); that on January 11, 1819, the said designated chaplain was confirmed in the chapel of the Archiepiscopal Palace (R. 48), and that the property of the proposed chaplaincy netted "a rent of one hundred eighty pesos annually" (R. 50), and he prayed that the Archbishop "declare sufficient the

income (congrua) referred to and order that a title to said chaplaincy issue to my said son and to me the administrator during his minority" (R. 50). A deed of foundation was then executed by the executor for acceptance and approval by the Archbishop, which expressly provided as follows (R. 53):

> "Said property is segregated from temporal properties and transferred to the spiritual properties of this Archbishopric without its being possible to alienate or convert the property as such into any other estate for any cause, even though it be of a more pious character, protesting that if the contrary should be done from now until then, he (the executor) declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents, and the said executor affirms and ratifies said condition before me and the witnesses hereinbelow named, so that by virtue of this Deed of Foundation canonical collation may be conferred on the said appointed chaplain. And for its firmness and greater validity he renounces with all solemnity the laws that may favor the said decedent, inserting and repeating herein all the clauses that may be necessary with all the requisites and conditions, so that the purpose which actuated her to do this act of piety may be duly accomplished, with the solemnities above set forth and the conditions herein inserted, which he asks and charges the above named chaplain and those who will succeed him to respect, comply and execute *ad perpetuam rei mei memoriam amen.*"

The stipulation of facts further shows that at the same time the Promotor Fiscal of the Archbishopric certified to

the Archbishop that the proposed "foundation of a collative chaplaincy of masses" is "in order and in accordance with the provision made by said testatrix in clauses nine, ten, eleven of the said will" (R. 55-6). Thereupon the Metropolitan Archbishop of the Philippine Islands, Apostolic Governor, etc., by decree approved "the foundation of the chaplaincy with all the circumstances and conditions provided for in said clause (of the will) and in the deed of foundation, as well as the imposition (charge) of seventeen hundred pesos against said building, *converting said sum into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction*" (R. 57), and the great grandson was appointed as collative chaplain, but not his father (R. 34-5).

At the time of this foundation of a collative chaplaincy in 1820, the property was of small value (R. 163); it was not located in the City of Manila, and its annual income was one hundred and eighty pesos, which was then sufficient to pay for the sixty masses directed by the will to be said in behalf of the souls of the testatrix and her relatives (R. 378). The income of one hundred and eighty pesos, therefore, provided three pesos for each of the sixty masses, or $1.50 per mass. The subsequent inclusion of the property in the City of Manila and the development and increase in values under the rule of the United States have increased the rentals from the property to approximately twelve thousand pesos per annum (R. 90, 91). The proof is that the ordinary charge for saying a mass in Manila at the present time is five pesos, or three hundred pesos per annum for sixty masses (R. 116), and the present controversy is in respect of the surplus income, namely, whether it may properly be applied pending the filling of the vacancy in the

chaplaincy to pious uses, or must be paid over to the present plaintiff who is not yet qualified to serve as chaplain.

The stipulation of facts sets forth that during the century that has elapsed since the foundation of the chaplaincy five chaplains were appointed (R. 34-6). The first was Esteban de Guzman, the great grandson of the testatrix, whom she had designated as such in her will. He was born on August 4, 1806, was appointed chaplain by the ecclesiastical authorities on June 16, 1820, and at that time was in his fourteenth year of age, namely thirteen years and ten months of age. He served as chaplain for almost eighteen years (R. 35). The second chaplain was Vicente de Guzman, born on November 22, 1816, a brother of the first chaplain. He was twenty-one years and four months of age at the time of his appointment by the Archbishop of Manila, in 1838, and he served as chaplain for twenty-nine years. The third chaplain was Mariano de Guzman, a great great grandson of the testatrix. He was at the time of his appointment in 1867 twenty-two years and nine months of age and served as chaplain for twenty-three years. There is no proof as to whether or not, as contemplated by the testatrix, the first, second, or third chaplain ever became a priest and thus able to comply with her request to the "Father chaplain" to celebrate sixty masses annually (R. 33). The fourth chaplain was Fernando Maniquis, a great great great grandson of the testatrix, and at the time of his appointment in 1890 he was twenty years of age, and served as such chaplain for seven years, and then resigned or renounced (R. 35). He subsequently married (R. 135-6). The fifth and latest chaplain was Angel Gonzalez, likewise a great great great grandson of the testatrix. He was

eighteen years and ten months of age at the time of his appointment in 1901; he served nine years and six months, and resigned or renounced the chaplaincy on December 6, 1910 (R. 35). It has been vacant ever since. This fifth chaplain, who is the father of the infant plaintiff, had evidently been studying for the priesthood (R. 99, 103-4), but in 1909 he left the seminary without leave (pp. 103-104), married (R. 36), must, therefore, have abandoned all intention of ever becoming a priest, and is now the father of three children of whom the infant plaintiff is the eldest (R. 135). The plaintiff was born in 1912 (R. 36), and when presented to the defendant Archbishop of Manila for appointment as a chaplain was only in his tenth year of age, and was in his fourteenth year, that is thirteen years and four months old, at the time of the trial in the Court of First Instance on January 27, 1926 (R. 149, 133).

While the record does not disclose whether or not each of the five chaplains was at the time of his appointment to the chaplaincy in question studying for the priesthood, it tends to prove that the fourth and fifth chaplains did study for the priesthood while serving as chaplains (R. 99, 103-4, 137); and that, although the fourth chaplain, Fernando Maniquis, had not been "tonsured" as a cleric when he was appointed (R. 145), he was tonsured later during his service as chaplain (R. 137). As to the fifth or latest chaplain, who is the father of the infant plaintiff, the evidence establishes that he must have been represented as tonsured or about to be tonsured contemporaneously with his appointment as chaplain, for he was then referred to as "being a *tonsurista*" (R. 99); that he was appointed chaplain by the then Archbishop of Manila as "the *tonsurista* Mr. Angel

Gonzalez y de Guzman" (R. 101), and that he "studied for the priesthood in the seminary of Manila, without finishing it" (R. 64, 103-4). The meaning of the term "tonsured" will be found in the appendix (pp. 9, 50) and, briefly stated, in the Roman Catholic Church it is an outward mark or symbol of dedication to study for the priesthood.

As respects the plaintiff, the present candidate for the office of chaplain, the record shows a striking lack of general as well as ecclesiastical fitness and qualification. There was some testimony of doubtful probative value that the prior chaplains when appointed were only required to know the "Christian Doctrine" (R. 138-9, 147, 249); but what was meant by or embraced within this term was not proved, and the record and opinions below are a blank upon this point. We are hence remitted to authoritative Roman Catholic and other ecclesiastical works for a definition or explanation of the term (see App. 3, 48-50, 52, 53).

But whatever the Christian Doctrine was and is, or whatever the witness may have conceived it to be, there was not a scintilla of evidence that when the infant plaintiff was presented to the Archbishop of Manila for appointment to the vacant chaplaincy at the age of ten years, he had the slightest idea of any such doctrine, or that he was otherwise qualified for appointment as a Roman Catholic collative chaplain. Even as late as the trial, when he was in his fourteenth year, he was not shown to be studying for the priesthood, or to have any knowledge of Latin or of any foreign language, or of the doctrines of the Roman Catholic Church, or any vocation for the priesthood. It is stated in plaintiff's brief (p. 9), that "it was found below that plaintiff possesses 'more learning and intelligence than any previous chaplain at the time of his appointment' (R., p. 373)." There was, on the contrary, no

such finding. The reference by counsel is not to any finding below, but merely to a statement by Mr. Justice Johns in his dissenting opinion. The basis for this statement of the learned justice is not given, but the only testimony to which it could refer is that of Fernando Maniquis (R. 139, 147), the fourth chaplain, born in 1870 (R. 35), whose testimony in this regard, as to the relative qualifications of plaintiff, and the first three chaplains, appointed in 1820, 1838 and 1867, respectively (R. 35)—all before witness' own birth—was ordered stricken from the record as hearsay (R. 148). As matter of fact, the testimony of the infant plaintiff himself exhibited a total absence of qualification for any ecclesiastical office, and was little short of pitiful. The part of his testimony as quoted in the opinion or decision of the trial court (R. 251) does not present a true or fair picture, and it does not set forth the most material and illuminating context. The entire testimony of this infant plaintiff, to which attention is urgently directed, shows his immaturity of mind and lack of ordinary intelligence for his age (R. 149-152), and it is, therefore, printed in the appendix to this brief in full for readier reference by the court (App. 56).

On February 25, 1922, the President of the San Juan de Letran College of the City of Manila, Father Prieto, in his capacity as patron of the chaplaincy, presented the infant plaintiff to the defendant Archbishop of Manila for appointment to the chaplaincy (R. 36, 58), but said patron testified at the trial that in so presenting the plaintiff (R. 211-12)—

> "I did not take into account the moral and intellectual qualifications of Raul Gonzalez because I was told that he was a boy eight years of age. The boy was not presented to me, but as I knew that I was the

patron of this chaplaincy I deemed it my duty to inform the Archbishop stating that Attorney Javier Gonzalez had shown me a family tree from which it appeared that the boy Raul Rogerio Gonzalez was the only legitimate heir to this chaplaincy and it was in this sense that I wrote the letter introducing to the Archbishop the boy Raul Rogerio Gonzalez, heir to the chaplaincy. In this sense must the letter of introduction to the Archbishop be interpreted."

There are exhibits annexed to the complaint (R. 62-66) which certify that in the opinion of the writers the infant plaintiff had the spiritual inclination, vocation and aptitude for the career of priesthood. These opinions, it is submitted, cannot under any sound theory oust or control the duty and discretion of the Archbishop, or be considered as legal evidence of qualification in opposition to or contradiction of his judgment.

The defendant Archbishop denied the application for the appointment of the plaintiff to the chaplaincy, and thereupon, under date of March 20, 1922, notified the plaintiff's father, who had been the fifth chaplain, in writing, as follows (R. 59-60):

"I have studied the case of the chaplaincy for which you apply for your son Raul Gonzalez y Gonzalez, and asked the opinion of persons well versed on the matter. After making the best effort for elucidating the point as to the capacity of the proposed candidate for the enjoyment of the chaplaincy founded by Mrs. Petronila de Guzman, I have arrived at the conclusion that the boy Raul Gonzalez has not at present the qualifications required for chaplain of the said chaplaincy.

"The grounds of my conclusion are the very canons of the new Code of Canon Law. Among others, I can mention canon 1442, which says: 'Simple chaplaincies or benefices are conferred upon clergymen of the secular clergy,' in connection with canon 108, paragraph 1, 'Clergymen are those already initiated in the first tonsure' and canon 976, paragraph 1, 'No one can be promoted to first tonsure before he has begun the course in theology'.

"In view of the Canon as above mentioned, and other reasons which may be adduced, I believe that the boy, Raul Gonzalez, is not legally (ecclesiastically speaking) capacitated to the enjoyment of a chaplaincy.

"Hoping that I have explained myself clearly, I remain," etc.

The Archbishop testified that it was against the laws of the Roman Catholic Church to appoint a young man as chaplain who had not studied enough and who had not become a cleric (R. 113); that an offer had been made to defray the expenses of the infant plaintiff's education even before he entered a seminary; that he was agreeable to admitting him to the seminary, and that when he had the necessary qualifications "to appointing him immediately chaplain of this chaplaincy" (R. 113, 120, 121, 123). His Grace further testified that the masses provided for in the will of the testatrix had been duly said and paid for, to his personal knowledge (R. 111-2, 115, 116, 118, 130); that after paying the stipends for masses, all the surplus income derived from the property of the vacant chaplaincy had been actually used for pious purposes, namely, education; that in this respect he had followed the established custom of his

predecessor in office (R. 111-12); that he had submitted this custom to the Holy See for its approval (R. 113); that the Holy See had approved the custom (R. 114), and that ordinarily chaplaincies are governed by the Canon Law (R. 119). Reference was made by His Grace in his testimony to a document received from Rome as to the application of funds of chaplaincies (R. 119). This was evidently the document identified later by him as signed by Cardinal C. de Lai, Secretary of the Consistorial Congregation, which is the immediate authority over and governs all the bishops of the world "and the matters relative to their dioceses in the name of the Holy Father" (R. 127). The document (R. 98) certifies the decree and authority of the Holy Father that after "maintaining in force the obligation to pay the annual charges of masses ordered in the foundation, benignly conferred upon the supplicant Right Reverend Archbishop the authority to use during fifteen years the residue of the incomes in favor of the seminary and other pious matters according to his conscience and will, any other thing to the contrary, notwithstanding".

The stipulation of facts sets forth in paragraphs nine and ten as follows (R. 36):

> "9. That according to the new canon law promulgated in the year 1918, 'las capellanias o benificios simples se confieren a clerigos del clero secular'; that in order to be a 'clerigo' one must have 'prima tonsura'; that in order to have 'prima tonsura' one must have begun the study of theology; and that in order to study theology one must be a 'bachiller'.*

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* There is no direct translation in the record of the Spanish used in paragraph 9, but the translation of *las capellanias o benificios simples se confieren a clerigos del clero secular* as found in the concurring opinion of Malcolm, J., is as follows (R. 346): "The chaplaincies or simple benefices are conferred on clericals of the secular clergy."

"10. That none of the five chaplains above mentioned was a 'clerigo' at the time of his appointment as such to the chaplaincy in question."

This latter stipulation (10) does not, of course, imply or show that the prior chaplains did not become "clerigos" subsequently while serving as chaplains and probably studying for the priesthood, nor does it imply that they were, at the time of their appointment in any way disqualified from immediately becoming "clerigos" and did not contemplate doing so. As above stated (p. 11), the record shows that two of them were ultimately "tonsured".

The Canon Law referred to in the stipulation of facts and in the testimony of the Archbishop, is contained in the Codex Juris Canonici, which was duly adopted by the Roman Catholic authorities at Rome in 1917, and promulgated and published in Latin in 1918. Professor Wigmore in his recent monumental and interesting work entitled "A Panorama of the World's Legal Systems" (vol. iii, p. 966) says: "This work, unlike the old Corpus Juris Canonici (with its Decretum, Decretalia, and Supplements), is not a compilation, but a genuine codification,—one of the modern world's greatest masterpieces of composition." The original Latin version of its applicable or relevant provisions is set forth in the stipulation of facts (R. 37-41), and a translation thereof is found in the record as Exhibit 2 (R. 92-97). Some of these are the provisions which it is contended are a violation of the plaintiff's rights under the Treaty of Paris of December 10, 1898 (30 Stat. 1754) and the Philippine Organic Act (32 Stat. 691), and which it is further claimed constitute a law impairing the obligation of the contract creating the collative chaplaincy in question. Such impairment, it is alleged, violates the constitutional rights

of the plaintiff under the said Treaty, Organic Act and the Constitution of the United States. It is not contended that the action of the defendant Roman Catholic Archbishop of Manila in declining to appoint the infant plaintiff as a collative chaplain was arbitrary or was not in due conformity with his ecclesiastical duty under the Codex Juris Canonici and the rules, discipline and governance of the Church in force in 1922.

The material provisions of the Codex Juris Canonici as set forth in the record (R. 37) and the agreed translation (R. 92) may be summarized as follows (the term "ordinary" means a bishop):

Only baptized males may validly receive ordination (sacram ordinationem), and they must have the necessary qualification *in the opinion of the ordinary* (Canon 968); the ordinary "has *the right to judge* whether a person presented is fit or not" (Can. 1464, par. 1); the ordinary *is not bound to state to the patron the reasons* why he cannot admit the person presented (par. 3); attendance at seminaries and studies of students for the priesthood are prescribed (Can. 1354, 1364); if the ordinary finds that the person presented is not fit, the patron or the one presented should, within ten days from notice to him of the rejection, file an appeal *to the Apostolic See from the judgment of the ordinary* (Can. 1465, par. 1); if no presentation is made within four months (Can. 1457, see R. 93) the chaplaincy is for the time being one of free collation of the ordinary (Can. 1458, par. 1); the person presented is only entitled to canonical appointment "after *the presentation is admitted*" (but not before; Can. 1466, par. 1); surplus income of the chaplaincy after deducting the expenses of the acting chaplain must one-half be added to the endowment or capital and one-half to the repair of the church and sacristy "unless

there is the custom of using the whole for some good common to the diocese" (Can. 1481); the necessary forum of cases relating to any *benefice* is "before the ordinary of the place of the benefice" (Can. 1560, par. 2), and in "cases relative to inheritance or pious legacies" the necessary forum is "before the ordinary of the place of the testator" (*ib.*, par. 4).

There are other relevant Canons (Nos. 108, 976 and 1442), cited by the Archbishop (R. 59-60), which are quoted in the appendix at pages 10 and 12.

There was no proof of any appeal to the Apostolic See as required by Canon 1465, par. 1, and the defendant Archbishop duly contended that such failure barred the infant plaintiff's suit or proceeding for a mandamus, but the trial court held such appeal to be unnecessary because in its view it would have been futile (R. 274), and the petitioner so urges in this court (brief, pp. 25-6). That such an appeal was requisite is shown *infra*, at page 45.

The plaintiff's brief concedes as matter of fact (p. 9) that he does not possess the qualifications required by the Code of Canon Law of 1917 and contends (p. 21) that "under the will and the deed of foundation it was sufficient that the candidate should be qualified ultimately to become a priest", without, however, pointing to any legal evidence in the record of any such present qualification or suggesting that a civil court and not the Archbishop of Manila was authorized to determine whether plaintiff was or was not "qualified ultimately to become a priest". It is then stated in such brief (p. 18) that "the plenary power of ecclesiastical authority is limited to matters ecclesiastical and spiritual". But certainly the appointment of a collative chaplain who "should be qualified ultimately to become a priest" (p. 21) must needs be essentially an ecclesiastical

and spiritual function, as must likewise be the management of property which was duly in 1820 "segregated from temporal properties and transferred to the spiritual properties of this Archbishopric" (R. 53), and thereupon expressly converted "into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction".

Whilst the proof in the record, aside from the excerpt from Alcubilla, quoted *supra* (p. 6), is not particularly definite as to what the Canon Law and the custom and discipline or governance of the Roman Catholic Church as to appointment and required qualifications for the office of a collative chaplain were in 1820 and prior to 1918, when the present Codex Juris Canonici was promulgated as aforesaid, except that knowledge of Christian Doctrine was required, it is proper to assume that the appointment was always in the discretion of the bishop and that there must, of course, have then been some qualification for appointment as a collative chaplain of the Roman Catholic Church; that the testatrix expressly requested that the chaplain himself should say the masses, which necessarily implied that he would become a duly ordained priest; that at least two of the five chaplains were shown to have been tonsured as above explained, and that the determination of the qualifications of a Roman Catholic collative chaplain were at all times clearly matters within the discipline and governance of the Roman Catholic Church and the jurisdiction of the Archbishop of Manila. The requirements for appointment to a collative chaplaincy prior to 1917 will fully appear by reference to the authoritative works cited and quoted in the appendix to this brief, which it is believed may properly be consulted by the court.

An attempt was made on the trial to establish that certain insurance moneys resulting from a fire which destroyed the building belonging to the chaplaincy had been misappropriated or diverted to unauthorized uses (R. 170, 171, 179), but this claim was refuted; as a matter of fact, the building was rebuilt by the Church out of the insurance money (R. 191-2), and, while there was no income from the property, the Archbishop nevertheless provided for the support of the chaplain (R. 163-4).

Finally, it was complained of as a grievance and wrong to the plaintiff that the defendant had registered the title to the property in the name of the corporation sole "The Roman Catholic Archbishop of Manila" as owner in fee simple (R. 67-8); but this was done under the order of a competent court of exclusive jurisdiction in such matters (R. 157), and His Grace testified that he acknowledged that the property belonged to the chaplaincy in question and that "there is no question about that" (R. 131). This step was undoubtedly taken to simplify the record title in conformity with the public policy and principle of the Torrens Title System in force in many of our States and in other countries, and introduced into the Philippine Islands in order to aid progress by insuring the people "clear documentary titles" (W. Cameron Forbes, The Philippine Islands (1928), vol. i, p. 315; Act No. 496, Philippine Commission, Nov. 6, 1902) and with no adverse bearing or intention whatever on the continuation of the trust. The cases cited in plaintiff's brief (at p. 15), as holding that the registration should have been in the name of the "capellania" itself, as a juristic person, merely hold that a "capellania" has juristic personality and is capable of having property registered in its name, but do not hold that the registration must be in the

name of the "capellania" where, as here, a collative chaplaincy is concerned, and the legal title to the property in question has been duly vested in the Archbishop. The decree of registration is conclusive only as to such legal title, and leaves equitable rights and obligations unaffected (*Severino* v. *Severino*, 44 Phil. Rep. 343, 354-6, cited in plaintiff's brief at p. 23). There is no reasonable ground for challenging the good faith and integrity of the action of the defendant Archbishop in applying to a court of competent jurisdiction, presumably with full disclosure (R. 157), for leave to register spiritual property of the Church under a fee simple title in the name of the Archbishop as a corporation sole. Nor is there any ground whatever for charging that this was a breach or renunciation of the trust, or in any sense a wrong done to the plaintiff or anyone else, or an attempt to divert the trust estate to unauthorized or improper uses.

There are a number of statements in the opinion of the trial court which are inaccurate and misleading. Thus, it is stated (R. 256) that the defendant Archbishop "claims to be the absolute owner of the property". As a matter of fact, he has made no such unqualified claim, but, as above shown, has acknowledged that the property belonged to the chaplaincy (R. 131). Later in the opinion (R. 274), the attitude of the Holy See in this matter is misconstrued in the statement that "His Holiness exonerated defendant Archbishop of Manila in his failure to fulfill faithfully the will of the foundress of this chaplaincy with regard to the saying of the masses and assumed to authorize him to spend the income of this chaplaincy according to his conscience and will". In support of this statement, the trial court referred to Exhibits 4 and 5. There is no Exhibit 5 in the

record, or at least nothing so identified; but Exhibit 4, which is the ruling of the Holy Father under date of July 3, 1925, already quoted, *supra*, p. 16, is as follows (R. 98-9): "and maintaining in force the obligation to pay the annual charges of masses ordered in the foundation, benignly conferred upon the supplicant Right Reverend Archbishop the authority to use during fifteen years the residue of the incomes in favor of the seminary and other pious matters according to his conscience and will, any other thing to the contrary, notwithstanding." Because of this ruling of the Papacy, as so misconstrued, the learned judge expresses the opinion "that it would be unjust to require plaintiff to undergo the trouble and expense of appealing to the Pope at Rome in view of the said letter" and that "such an appeal by plaintiff would have been a useless proceeding. The law does not require a vain and useless act to be performed" (R. 274), and the plaintiff now so contends (Brief, point III, p. 25).

The judgment of the Court of First Instance of Manila (*i.e.*, the court of original jurisdiction) ordered "the defendant . . . as a corporation sole, and His Grace Michel J. O'Dougherty Roman Catholic Apostolic Archbishop of Manila, its sole representative, forthwith to appoint plaintiff Raul Rogerio Gonzales, as chaplain of the said chaplaincy founded by Doña Petronila de Guzman" (R. 293); to pay to the plaintiff 173,725 pesos "as the rents and income of the property of said chaplaincy from January 1, 1911, to December 31, 1925" (*i. e.*, from a date prior to the birth of the plaintiff), less certain deductions, "and furthermore, from the date of plaintiff's appointment as chaplain, to pay the said plaintiff through his guardian or guardian *ad litem*, the net income of said property from time to time as collected" and "pending the final ter-

mination of the action, to allow and pay to plaintiff out of the accumulated funds of the chaplaincy of Petronila de Guzman for his maintenance, education and legal expenses a pension of 1,000 pesos a month" (R. 294). The Supreme Court of the Philippine Islands (R. 397-8) reversed the above mentioned judgment of the Court of First Instance of Manila, principally on the authority of *Watson* v. *Jones,* 13 Wall. 679, *infra,* and decreed that the defendant The Roman Catholic Archbishop of Manila be "absolved from the complaint", etc. (R. 398).

The gist of the opinion of the court below will be found at pages 334-338 of the record and particularly in the following paragraph (R. 337):

> "The trial court appears to have been of the opinion that the new canon of 1918 cannot be given effect as regards the chaplaincy in question for the reason that to do so would impair the obligation of the trust involved in the acceptance by the Archbishop of the provisions for the establishment of the chaplaincy, with the result of impairing the obligation of a contract in violation of our Organic Act. This idea is in our opinion fallacious. It is undeniable that under Spanish law an ecclesiastical canon such as we are now considering could have been adopted regardless of its effect upon the foundation or the persons interested therein, and it cannot be admitted that an obligation which could be changed under Spanish law has become immutable from the promulgation by Congress of the constitutional provision forbidding the impairment of contracts by legislative Acts. Under said constitutional provision obligations are to be respected as they stand, and it was not intended that, by virtue of this provision, obligations should be made more onerous to either

party. If the proposition maintained by the plaintiff's attorneys be true, then we are confronted with the spectacle of a chaplaincy which is a perpetual sinecure for a chaplain without ecclesiastical qualifications. Perpetuities of any sort are objectionable, but one of this character would be intolerable. As is justly said by the attorney for the appellant, 'it is unthinkable that qualifications for chaplain should remain stagnant and the same forever'. In passing upon a question of this character the court is not at liberty to ignore the effects upon human society which would result from adopting the proposition upon which the case for the plaintiff here rests."

The concurring opinion of Mr. Justice Malcolm, among other things, said (R. 344-5; 352-3):

"The Supreme Court of Spain has held that properties aggregated to a chaplaincy with the approval of the competent ecclesiastical authority became spiritualized, and form an integral part of its endowment (*Sentencia del Tribunal Supremo,* June 1, 1863, 8 *Jurisprudencia Civil,* p. 364).

"When the endowment was created, there existed a unity of Church and State in the Philippines. The change to American sovereignty caused the complete separation of Church and State. All special privileges of the Roman Catholic Church were abolished. But the property of the Church was protected since in the Treaty of Paris it was declared that the relinquishment or cession of the Philippine Islands 'cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds of . . . ecclesiastical or civil bodies'."

"The parties seem much concerned with worldly considerations, with obtaining control of the tidy sum involved. Yet if we would place ourselves in the position of the elderly lady who conceived the foundation, it would be realized that what she desired was the saying of masses for pious purposes by a descendant, and so instituted a foundation to attain that purpose. The wishes of the foundress of the spiritual trust should govern and will rather be subserved than thwarted by the application of the Canon Law of 1918 to the trust.

"It is not for the courts to exercise control over the dignitaries of the Roman Catholic Church in the performance of their discretionary and official duties. Rather is it for the applicant to conform to just church regulations. The courts should ponder long before compelling the defendant Archbishop of Manila to appoint a particular person to a chaplaincy, in contravention of the mandatory provisions of existing canon law.

"The all controlling considerations in the disposition of this case are the intention of the foundress of the spiritual trust, which should be respected, and the impropriety of the courts invading the religious realm and their attempting to order things to be done, the performance of which appertain exclusively to the regularly constituted authorities of the Roman Catholic Church.

"Premises conceded, the issue should be resolved by holding that the court will not sanction the expedition of a writ of mandamus, directed to the Roman Catholic Archbishop of Manila, reversing him in his decision to apply the Canon Law of 1918 to the foundation."

The plaintiff's brief concludes by urging the court to adjudge that he is entitled "to be instituted as chaplain, but without sacerdotal functions until he is qualified to perform them, and to be paid the accumulated income" (p. 31); but adds that "if this court considers that *mandamus* should not issue to require plaintiff's induction as chaplain, but that he is entitled to the income of the foundation this relief might be afforded by affirming only so much of the decision of the Court of First Instance as awards a money judgment". Thus, in the absence of any proof whatever of the most primary qualification for the priesthood, this court is urged to award a money judgment for the full amount of the "accumulated income" of the spiritual property in question, which has not been accumulated at all, but expended, primarily, in duly carrying out the wishes of the foundress as to the saying of masses and secondarily in applying the surplus to proper pious uses, as testified to uncontradictedly by the defendant Roman Catholic Archbishop of Manila (R. 111-12).

There are instances of errors and omissions of fact in plaintiff's brief which must be corrected.

Thus, at page 4 of plaintiff's brief, it is stated that "There is no substantial issue or question of fact in the case." This is inaccurate both as respects plaintiff's general qualifications, as to the purpose and intent of the testatrix, as to the qualifications of the prior chaplains, as to the purpose and intent with which the defendant registered title to the property of the chaplaincy in question, as to observance of the trust, and as to inferences or conclusions to be drawn from the evidence.

At page 5, plaintiff's brief quotes part of a sentence from the executor's deed of 1820, but omits the context and remaining part thereof, which speaks of the purpose of the

deed as being "that by virtue of this Deed of Foundation canonical collation may be conferred on the said appointed chaplain" (R. 320).

At page 6, plaintiff's brief quotes from the decree of approval of the chaplaincy by the Archbishop in 1820, but omits the obviously controlling part that follows, viz., "converting said sum into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57).

On the same page, the brief quotes what purports to be the instrument embodying the appointment to office of the fifth chaplain in 1901, but omits the first part of the document, which relevantly recites the qualifications of the applicant! Such omitted part reads as follows:

> "Now, therefore, the necessary requisites and qualifications according to law being found concurring in D. Angel Gonzalez y Guzman, tonsured, a boarding student in the College of San Juan de Letran of this City" (R. 322).

At page 8, it is stated that since 1910 "the defendant has applied the income to other purposes (Rec., p. 324)" but the reference to the record shows that "all of the income thus received less the expenses of administration *and cost of the masses,* has been applied to the purposes of education, beneficence and charity under the directions of the Archbishop, with the approval of His Holiness, the Pope".

It is further stated by plaintiff, on said page 8, that "prior to 1918, the only relevant requirement was one of age"; but this is contrary even to the testimony of plaintiff's own witness (R. 138-9).

On page 13 is the assertion that the intention of the testatrix as construed by plaintiff "was clear and beyond

question," when the plaintiff's construction is neither clear nor beyond question but as matter of fact disputed. Again and similarly, on page 14, is the assertion that "the facts above outlined are undisputed"!

It is further requisite that attention should be called to the fact that similar grave inaccuracies and omissions in respect of essential and material facts occur in the petition for the writ of certiorari, notwithstanding the repeated admonitions of the court as to the necessity for "studied accuracy". *Erie R. R.* v. *Kirkendall,* 266 U. S. 185; *Furness, Withy & Co.* v. *Yang-Tsze Ins. Ass'n,* 242 U. S. 430, 434.

Thus, on page 4 there is the statement that the income of the chaplaincy "has been applied by the defendant to other purposes", when as matter of fact the proof clearly shows that the masses have been said to the personal knowledge of the Archbishop of Manila and the surplus has been applied to pious uses in aiding the parochial schools within the Archdiocese (R. 111-2, 115-6, 118, 126, 130). On the same page of the petition there is the categorical statement that "prior to 1918 the only relevant requirement was one of age", when as matter of fact the plaintiff's own witness testified that there was the requirement of knowledge of the Christian Doctrine (R. 138-9, 147, quoted at 249). It is then stated on page 5 of the petition that it is "undisputed . . . that plaintiff possesses 'more learning and intelligence than any previous chaplain at the time of his appointment' ", when as a matter of fact no such proof appears in the record as above explained, and there is nothing in the whole history of the case to warrant the statement that the alleged fact is "undisputed". There is on page 6 the statement that the reversal by the Supreme Court of the Philippine Islands "leaves the defendant free to

proceed with this diversion of trust funds which has continued for the past eighteen years", when there has been no diversion at all, because, to repeat, the proof shows uncontradictedly the saying of the sixty masses and the application of the surplus net income to pious uses (R. 111-2, 116, 118, 130).

CONTENTIONS OF DEFENDANT.

On behalf of the defendant, The Roman Catholic Archbishop of Manila, it is contended that the judgment of the Supreme Court of the Philippine Islands, absolving him from the complaint and reversing the judgment of the trial court, was right and should be affirmed upon the following grounds discussed in the points hereinafter argued, viz.:

1. That the Roman Catholic Church is entitled through its representative the defendant, Roman Catholic Apostolic Archbishop of Manila, to exercise exclusive jurisdiction over the subject of the qualifications and appointment of collative chaplains and the administration and disbursement of funds arising from the rentals and income of property of a collative chaplaincy, which was expressly converted in 1820 "into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57).

2. That the testatrix Doña Petronila de Guzman in and by her last will and testament did not create or vest any heritable right in her descendants to appointment to the chaplaincy in question in succession to her great grandson Esteban de Guzman whom she designated as the first chaplain, irrespective of ecclesiastical qualifications, and did not create and vest any heritable property right in her descendants to any surplus that might in the future possibly arise over and above the expense of having sixty masses

per annum said for the repose of the souls of herself and certain named relatives and the sustenance of any acting chaplain.

3. That the infant plaintiff was not qualified to be appointed a collative chaplain of the Roman Catholic Church under its rules and discipline whether before or after the codification in 1917 of the Canon Law.

4. That after fully providing for the perpetual trust assumed on behalf of the Roman Catholic Church, that is to say, the saying of sixty masses per annum according to its custom and practice, the Church was authorized and bound to apply the surplus to other pious uses during the continuance of any vacancy in the chaplaincy.

5. That no treaty or constitutional right of the infant plaintiff was violated and the obligation of no contract whatever was impaired by the refusal of the defendant Archbishop to appoint him as a collative chaplain of the Roman Catholic Church.

IMPORTANCE OF QUESTIONS PRESENTED.

The importance of the issues involved in the case at bar, so far as they affect the governance and independence of the Roman Catholic Church, if not, indeed, of all Churches, whether Catholic, Protestant, or Jewish, cannot be exaggerated. In the Philippine Islands alone there are about one hundred and ninety Roman Catholic collative chaplaincies (R. 131), and there are undoubtedly many thousand like chaplaincies throughout the world created during the centuries of the existence of the Roman Catholic Church. A ruling by this court that appointment to a collative chaplaincy and use of surplus funds arising from its spiritual property are heritable as property rights vested in the sev-

eral families of the founders and subject to the jurisdiction and control of the civil courts and not of the ecclesiastical tribunals of the Church more than a century after the foundation of a chaplaincy, would have very far-reaching consequences, as recognized by Mr. Justice Street writing for the court below in the above quotation.

In the present case, there has been no arbitrary treatment of the infant plaintiff, or of any one else, and no perversion or denial of any obligation or trust assumed by the representatives of the Roman Catholic Church. It admits its duties under the trust. The trust created by the testatrix and accepted by the Church one hundred and nine years ago and all obligations thereunder are not in any sense challenged or denied; the masses for which she piously and reverently provided are being and have always been said; the defendant even offered to appoint the plaintiff immediately as chaplain if and when duly qualified, according to the discipline, rules and laws of the Roman Catholic Church, to occupy an ecclesiastical office and administer ecclesiastical or spiritual property. The property of the chaplaincy has been since 1820 indisputably "segregated from temporal properties and transferred to the spiritual properties of this Archbishopric" (R. 53), and was thereupon constituted "spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57). For a civil court now to assume jurisdiction and compel the appointment by writ of mandamus of such an unqualified person as the plaintiff by his own testimony was shown to be and order the defendant to treat surplus income from its spiritual property as heritable in the families of the founders of collative chaplaincies would establish a patently unsound precedent fraught with incalculable mis-

chief and prejudice to the just and immemorial rights and discipline of the Roman Catholic Church.

There is no claim in the case at bar by the respondent that the Roman Catholic Church could repudiate obligations duly assumed by it under a will or deed of foundation, or that it would be at liberty with respect to the present foundation to change or vary the express terms of the will, or to apply all the income to other purposes than the saying of at least sixty masses annually and, if a surplus then remained, other pious uses. If the Roman Catholic Archbishop should ever repudiate such a trust obligation and divert the fund to unauthorized purposes, a different question would then be presented as to whether a court of equity at the suit of the Attorney General might in a proper case invoke civil jurisdiction to enforce the trust obligation assumed by the Church in 1820.

Much is said in petitioner's brief of the alleged civil wrong done to him by the codification of 1917 in making a change with respect to the introduction of tonsure as a prerequisite for the holding of a chaplaincy. As appears in the appendix to this brief (pp. 27, 30, 33, 38, 42), this requirement was not, in fact, an innovation of 1917, but had existed long prior to that date. If, however, it be assumed for the purposes of the argument and disposition of this case that in the codification of the Canon Law in 1917, a change was made in the qualifications for chaplains, viz., that the candidate should have shown before appointment some vocation for the priesthood by having become a *clericus* or clerical and having been tonsured as a symbol of such intention and vocation, it is, nevertheless, insisted that such an amendment of the Canon Law would be entirely within the rights and powers of the Church and not subject to re-

view and control in a civil court. With the progress of civilization, education and culture, and in the light of experience, the Roman Catholic Church may, of course, be reasonably and naturally called upon to prescribe improvements in the qualifications of its chaplains, and is not bound to adhere to the laws and practices of by-gone ages (see App. 47-48; *Lewis* v. *Gaillard*, 61 Fla. 819, 842-3; *Russie* v. *Brazzell*, 128 Mo. 93, 107; *Lamb* v. *Cain*, 129 Ind. 486, 514); and the qualifications of its chaplains under pious collative foundations ought to be determined by the appointing bishop according to the rules of discipline of the Church and the Canon Law existing and in force at the time of any appointment to a chaplaincy. It is surely not reasonable to require the creation of different classes of chaplains in the spiritual domain of the Roman Catholic Church graduated according to the qualifications existing at the dates of the creation of particular foundations for pious uses and not according to the qualifications in force at the time of appointment or ordination and service; and it is inconceivable that the pious foundress of this chaplaincy intended otherwise.

The sole relevant questions, in final analysis, are whether a civil court of the United States has jurisdiction of such a controversy on the alleged ground that the Roman Catholic Church could not change any of its ecclesiastical requirements and qualifications for appointment to a Roman Catholic chaplaincy from those existing in 1820; whether any civil right, treaty, or constitutional provision, has been violated by the codification of the Canon Law made in 1917; whether the civil courts of the United States have judicial power to mandamus a Roman Catholic Archbishop and command and compel him to appoint as a chaplain of the Church a particular person who is indisputably not qualified

by its laws and discipline, and, finally, whether the plaintiff who has never been or served, or been qualified to serve, as a chaplain, by any standard ever in force, either before or after 1917, nevertheless has a civil property right to all the net or surplus income of this collative chaplaincy accruing since a date before his birth on some notion or theory of inheritance from the testatrix arising under civil law, and remediable as such in a civil court.

POINTS.

I.

AS TO THE JURISDICTION OF A CIVIL COURT OF THE UNITED STATES OVER THE PRESENT CONTROVERSY BETWEEN THE INFANT PLAINTIFF AND THE DEFENDANT ROMAN CATHOLIC ARCHBISHOP OF MANILA.

It has already been shown that the property of the chaplaincy in question was dedicated and constituted by the testatrix "into a collative chaplaincy" of the Roman Catholic Church (R. 33, ninth item of will) and that it became in 1820 spiritual property "subject to the ecclesiastical forum and jurisdiction" (R. 57). Although she designated as the first chaplain her great grandson, then an infant of the age of ten years, she undoubtedly contemplated that he would become a priest, probably before her death, for she requested "the Father chaplain to celebrate sixty masses annually", but provided for administration, in case of the contingency that he might still be an infant and, therefore, not a priest at the time of her death (R. 33-34).

The plaintiff's theory of a civil right enforcible in the secular courts is entirely contradictory to the clear and expressed intention of the testatrix herself; for it is indisputable that she was a devout member of the Roman Catholic Church (R. 33), and intended to establish a "col-

lative chaplaincy'' with all that the term implied and to have it subject to the laws and jurisdiction of that Church (R. 33). It is likewise indisputable that the deed of foundation executed by her executor expressly segregated and transferred the property of the chaplaincy ''to the spiritual properties of this Archbishopric" in the broadest possible terms and "renounces with all solemnity the laws that may favor the said decedent" (R. 53), and equally indisputable that the decree of approval executed by the Metropolitan Archbishop accepted and approved the foundation of the chaplaincy in the will and deed of foundation and thereby expressly converted the agreed value of the property "into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57). It would be difficult, if not impossible, to devise language more clearly evidencing the intention and purpose of the testatrix, of her executor and of the Roman Catholic Archbishop then in office to remove the property entirely beyond the jurisdiction of the secular courts and to entrust the perpetuation of her wishes solely to the protection of the ''ecclesiastical forum and jurisdiction''.

Mr. Chief Justice Fuller, delivering the unanimous opinion of the court in *Ponce* v. *Roman Catholic Church* (1908), 210 U. S. 296, 318, among other things said:

> ''The corporate existence of the Roman Catholic Church, as well as the position occupied by the Papacy, has always been recognized by the Government of the United States.''

And the Treaty of Paris (30 Stat. 1754) expressly covenanted (Article VIII) that the rights of the Roman Catholic Church would be duly maintained, for it provided:

"that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, of municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be. . . ."

At the time of this treaty, December 10, 1898 (ratified by the Senate, February 6, 1899), practically all of the civilized native population were adherents of the Roman Catholic Church (W. Cameron Forbes, "The Philippine Islands", vol. i, p. 15).

In 1914 the Supreme Court of the Philippine Islands, the court below, had before it for adjudication a controversy over the income of this very chaplaincy. The controversy was between the latest incumbent, Angel Gonzalez (father of the present plaintiff) and the then Roman Catholic Archbishop of Manila (the predecessor in office of the present defendant). The decision in that case of the Court of First Instance will be found in the record at pages 102-110. The opinion of the Supreme Court of the Philippine Islands, in reviewing said decision of the Court of First Instance, among other things said (*Gonzalez* v. *Harty, Roman Catholic Archbishop of Manila*, 32 Phil. Rep. 328, 337-338):

"Our attention has been invited to the fact that the property affected by the chaplaincy should have been administered by the chaplains and not by the administrators of the Sagrada Mitra, inasmuch as clause 11

of the foundress' will so provided. To refute this assertion, it suffices to say that the provisions of the said will set forth that the first testamentary executor of the estate of the testatrix should act as the administrator of the property during the minority of the first chaplain appointed in that document, Esteban de Guzman. This provision must be understood to be mandatory, except as otherwise provided by the canonical laws and as, pursuant therewith, the chief ecclesiastical authority may order, for, after the latter had accepted the foundation of the chaplaincy, the administration of its property appertains to the authorities established by the Church, pursuant to the latter's own laws, and this rule has been observed since 1863."

In the case of *Evangelista* v. *Ver*, 8 Phil. Rep. 653, 659, the same court declared:

> "It is settled law in the United States that the canons and the rules of a church will be enforced in adjusting property rights growing out of ecclesiastical relations. They enter into the contract and appointment of officers and members in the same manner as do the by-laws of a mercantile association or of a club and, when not in contravention of established law, they will be sustained by the courts (*Watson* v. *Jones*, 80 U. S. 679; *Baxter* v. *McDonnell*, 155 N. Y. 83, p. 93; *Leahey* v. *Williams*, 141 Mass. 345; *Roshi's Appeal*, 69 Pa. 462.)"

See also, to the same effect, *Chase et al.* v. *Cheney*, 58 Ill. 509, 536, where it is said: "The contract (of ministry)

must be construed and enforced, by reference to the canons, which form part of it"; and *Gibbs* v. *Gilead Ecclesiastical Society,* 38 Conn. 153, 166.

In a later case, the Supreme Court of the Philippine Islands again passed upon the question of jurisdiction and of the application of the Canon Law in *United States* v. *Cañete* (1918), 38 Phil. Rep. 253, 260, as follows:

> "It is the established doctrine of the American courts that in matters purely ecclesiastical the decisions of the proper church tribunals are conclusive upon the civil tribunals."

There is the fullest authority in support of these statements of American law both in this court and in the courts of many States.

The leading decision in this court upon the question of church government of spiritual property and the necessity for the freedom of any Church from civil or secular interference or control is the well-known case of *Watson* v. *Jones,* 13 Wall. 679, *et seq.* It was decided at the December 1871 term, and it related to a controversy which had arisen as to the government, discipline and control of a Presbyterian Church in the City of Louisville, State of Kentucky. The opinion of the court was written by Mr. Justice Miller. He discussed the protection which the law under our system of jurisprudence throws around the dedication of "property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles, provided that in doing so they violate no law or morality, and give to the instrument by which their purpose is evidenced, the formalities which the laws require;" he referred to "that full, entire, and practical freedom for all forms of religious

belief and practice which lies at the foundation of our political principles," and added the following pertinent language (at p. 727 *et seq.*), viz.:

> "In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. . . .
>
> "In this country the full and free right to entertain any religious belief, to practise any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one ag-

grieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

"Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so. . . .

"One of the most careful and well-considered judgments on the subject is that of the Court of Appeals of South Carolina, delivered by Chancellor Johnson in the case of *Harmon* v. *Dreher*.* The case turned upon certain rights in the use of the church property claimed by the minister notwithstanding his expulsion from the

* 2 Speer's Equity 87.

synod as one of its members. 'He stands', says the chancellor, 'convicted of the offenses alleged against him, by the sentence of the spiritual body of which he was a voluntary member, and whose proceedings he had bound himself to abide. It belongs not to the civil power to enter into or review the proceedings of a spiritual court. The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of civil authority. The judgments, therefore, of religious associations, bearing on their own members, are not examinable here, and I am not to inquire whether the doctrines attributed to Mr. Dreher were held by him, or whether if held were anti-Lutheran; or whether his conduct was or was not in accordance with the duty he owed to the synod or to his denomination. . . . When a civil right depends upon an ecclesiastical matter, it is the civil court and not the ecclesiastical which is to decide. But the civil tribunal tries the civil right, and no more, taking the ecclesiastical decisions out of which the civil right arises as it finds them.' . . .

"We cannot better close this review of the authorities than in the language of the Supreme Court of Pennsylvania, in the case of the *German Reformed Church* v. *Seibert:* * 'The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judges of what constitutes an offence against the word of God and the discipline of the church. Any other than those courts must be incompetent judges of matters of faith, discipline, and doc-

* 3 Barr 291.

trine; and civil courts, if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt which would do anything but improve either religion or good morals."

From the time of the decision of this court in *Watson* v. *Jones* in 1872 (December Term 1871), there has never been any challenge or qualification in this court of the doctrine enunciated in that leading case, and it has been repeatedly approved and followed in many States. The question as to the binding and exclusive application of the laws and discipline of the Presbyterian Church in respect of the transfer and administration of property and income belonging to it came again before the court after the lapse of forty-six years in the case of *Shepard* v. *Barkley, Moderator, etc.*, 247 U. S. 1, 2, and it emphatically reaffirmed the rule in *Watson* v. *Jones*, as not open to question, in a memorandum opinion of Mr. Chief Justice White by direction of the court, in which many cases and most instructive examples of the application and scope of the settled doctrine in varying aspects are cited.

That the doctrine of *Watson* v. *Jones* is directly applicable to the present controversy cannot be doubted. That case, as appears *supra*, p. 40, relies upon the "implied consent" of "all who unite themselves to such a body" to submit to the ecclesiastical government. In the case at bar, however, the consent to the ecclesiastical government, which was merely implicit in *Watson* v. *Jones*, is explicit, and there is neither room nor necessity for presumption; for as shown above (p. 36), the deed of foundation and decree of approval of the chaplaincy in the plainest possible language

declared that the property was converted into spiritual property of a perpetual character "subject to the ecclesiastical forum and jurisdiction", and renounced "with all solemnity the laws that may favor the said decedent".

An illustrative example of the propriety of applying the principles of Canon Law in a controversy growing out of ecclesiastical relations, is found in the case of *Jones, Catholic Bishop of Porto Rico* v. *The Registrar of Property,* 18 Porto Rico 124, 126, where the court said:

> "These principles of Canon Law are perfectly applicable to this case for the reason that the question involved is the determination of the rights appertaining to and the relations existing between a nun, a convent and the prelate of the diocese, which are rights and relations which have been fixed by rules issued, in the exercise of its powers to govern its own institutions, by the Roman Catholic Church, the personality of which has been fully recognized by the Supreme Court of the United States . . ."

See also for interesting and striking decisions as to the doctrine of non-interference with Church authorities, the following additional cases: *Baxter* v. *McDonnell,* 155 N. Y. 83, 101; *Connitt et al.* v. *Reformed Protestant Dutch Church of New Prospect et al.,* 54 N. Y. 551, 561; *Walker* v. *Wainwright,* 16 Barb. (N. Y.) 486, 487; *First Presbyterian Church* v. *First Cumberland Presbyterian Church,* 245 Ill. 74, 99; *Fussell* v. *Hail,* 233 Ill. 73, 77; *Wehmer* v. *Fokenga,* 57 Neb. 510, 516; *Holwerda* v. *Hoeksema,* 232 Mich. 648, 652; *Chase* v. *Cheney,* 58 Ill. 509, 536; *O'Donovan* v. *Chatard,* 97 Ind. 421, 429; *White Lick Quarterly Meeting* v. *White Lick Quarterly Meeting,* 89 Ind. 136, 151; *Hackney* v. *Vawter,* 39 Kan. 615, 628.

The courts have likewise held, and the policy of our government of non-interference in religious matters requires, that in any event an appeal to the ecclesiastical authorities for redress must first be taken, if available, before a civil court will intervene. *The State ex rel. McNeill* v. *Bibb Street Church,* 84 Ala. 23, 35-6; *German Reformed Church* v. *Seibert,* 3 Pa. St. 282, 291. Such a right of appeal, as stated *supra* (p. 18), is expressely given by Canon 1465, par. 1 of the Canon Law of 1917 to the plaintiff herein, but the plaintiff has utterly failed to avail of it. The plea of the alleged futility of such an appeal to the Apostolic See, the highest tribunal of the Roman Catholic Church, would, if tenable, have applied in most of the cases cited above. The same argument, that the ecclesiastical tribunal cannot be a judge in its own cause, would have applied (and in fact was urged) in *Watson* v. *Jones* (13 Wall. 679, see p. 707, argument for the appellants), and *Shepard* v. *Barkley, Moderator, etc.* (247 U. S. 1), as well as to all the other cases refusing to take jurisdiction of controversies relating to ecclesiastical officers and the management of spiritual or ecclesiastical property. Necessarily, every Church is more or less interested in the administration and income of its spiritual properties, such as this property was, and if its appellate tribunal is to be excluded because it would be a judge in its own cause, the result would be the complete nullification of the long established rule so emphatically enunciated in the cases cited above.

II.

AS TO THE WILL FOUNDING THE COLLATIVE CHAPLAINCY IN QUESTION, THE DEED OF FOUNDATION AND THE DECREE OF APPROVAL BY THE METROPOLITAN ARCHBISHOP OF THE PHILIPPINE ISLANDS MAY 12, 1820.

A fundamental error in the plaintiff's case, it is submitted, is the assumption that the chaplaincy in question constituted an hereditary property right and that as a descendant of the testatrix, Doña Petronila de Guzman, he had inherited some kind of a property right enforcible in the civil or secular courts and was thereby not only entitled to be appointed a collative chaplain of the Roman Catholic Church but to receive all the net revenues and income of the property of such chaplaincy even though not qualified to be a chaplain under existing canon law. As stated by the court below, the plaintiff's position in that court was as follows (R. 328):

> "Upon turning our attention more directly to the legal aspects of the controversy, we discover that the case of the plaintiff proceeds upon a train of reasoning which may be expressed as follows, namely, that the Archbishop, as representative of the Church, is the holder of the empty legal title to the property on which the chaplaincy is founded; that the beneficial interest thereto is vested exclusively in the heirs of the foundress; that the plaintiff, as her next of kin, has an unqualified right to be appointed to the chaplaincy, without regard to his lack of ecclesiastical qualifications; that the plaintiff, having title to the chaplaincy, is entitled to demand of the defendant the entire net income received by the latter as administrator of the property during the pending vacancy, as well as the right to be paid the income that may hereafter be produced by the property so long as the plaintiff shall

occupy the post of chaplain. In a word, it is the contention of the plaintiff that the foundation in question is a perfected trust, enforcible in a court of equity, that the Archbishop is a mere trustee, and that the plaintiff is the present rightful beneficiary of the entire property."

At this point, it should be noted that, contrary to the statement in plaintiff's brief (p. 20), that "the existence of some outstanding property rights was recognized by the express reservation in the court's decision (R. pp. 340, 341)", the court below merely observed that any action to secure redress for "alleged" improper diversion of the funds of the chaplaincy should be brought as a class suit (R. 340); and further, that it would not interfere with the decision of the trial court reserving to the plaintiff "any legal rights that he may have" with reference to the cancellation of the Torrens certificate, in a proper proceeding before the proper court, observing, however, that if relief should be sought in the direction indicated, the contention would probably in the end resolve itself into the question whether such certificate should be annotated so as to show that the property was held by the defendant subject to the conditions stated in the documents constituting the chaplaincy in question; and it further observed that such proceeding ought also to be brought as a class suit (R. 340), but without holding or intimating, in either connection, in any way whatever that such suits would lie.

There is not the slightest expression or indication in the controlling documents, namely, the will, the deed of foundation and the decree of acceptance (R. 43-58), of any intent on the part of the testatrix to provide that her descendants, other than the great grandson she designated as first chap-

lain, should be entitled to be appointed collative chaplains in the future after the death or inability or default of the said great grandson Esteban de Guzman. She makes no provision whatever for successors to the first chaplain, and it is only in his "default" (y falta de este) that the nearest relative is to be appointed, and in "defect" or "default" (defecto de este) of such a relative, then a collegian (colegial) of San Juan de Letran (R. 275). The translation of these Spanish terms is indisputably "in default of that one" or "in defect of that one". They do not mean "in succession to". Had the testatrix intended to provide for succession and heritable successors to the first chaplain indefinitely for centuries in the future and to vest an heritable right of succession to the chaplaincy and its income in her nearest descendant at the time of any vacancy, she would have had no difficulty in expressing that simple idea and intent in appropriate and plain language. When a carefully drawn and precisely phrased document, such as this will obviously was, designates a certain person to fill an office and in his default names another, this does not mean that such other person is to take as successor. On the contrary, he only takes in the place of and upon the default, that is, the inability or failure to qualify, of the designated first chaplain. By no reasonable construction or stretch of language can "default" be held to refer to the death of the first chaplain after many years of incumbency, or to heritable succession by her descendants during the unlimited future.

In the answer of the defendant in the Court of First Instance, it was duly pleaded as a defense that the will of the testatrix did not provide that the successors to the designated first chaplain should be selected solely from among the nearest relatives (R. 18). It is true that in the Supreme Court of the Philippine Islands, the defendant

relied on other grounds, and did not oppose the contention that the nearest relative *if ecclesiastically qualified* had an ecclesiastical—not a civil—right to preference. The plaintiff, however, is urging upon this court that "the last will of the founder or foundress of a chaplaincy is the supreme law to be observed" (R. 277; plaintiff's brief, p. 16). Yet the will of the foundress in the case at bar in the plainest terms requires a collative chaplaincy, not the mere laical chaplaincy which is, in effect, the result sought for by plaintiff; and her will, moreover, urged as "the supreme law to be observed", fails utterly, as shown above, to make any provision whatever for any heir, except as to the first incumbent, or any provision as to successors. Nevertheless, plaintiff, whose respect for and insistence upon the terms of the will and the governing effect to be given thereto is so great as to lead him to attempt to apply it for the purpose of restricting the Church forever to the qualifications for a collative chaplaincy in effect in 1820—a misapplication of the principle which would defeat, and not further, the testamentary intent—the plaintiff does not hesitate to contend that the clear, precise requirements of the will may after all not govern the case, but that these requirements have been overridden by a so-called practical but unauthorized course of construction, which has conferred upon the Archbishops of Manila a power of changing a foundation—a power which plaintiff denies to the Holy Father and the Councils of the Church. Plainly, it is not the Church, but the plaintiff, that is seeking to subvert the foundress' will.

The Roman Catholic Archbishops of Manila in their discretion from time to time as vacancies arose naturally and liberally gave preference to the nearest qualified or acceptable relative of the testatrix; but this practice, considered by plaintiff a binding practical construction, did not change the

plain meaning and effect of the language of the testatrix, or create an entirely new contract or obligation, nor could it in any sense create a legal right in the descendants enforcible in a civil court, or estop the duly constituted representatives and tribunals of the Church from exercising their discretion or applying the provisions of the Canon Law. As a matter of Church policy or of gratitude, and of respect for the memory of the foundress, it was, to repeat, quite natural that the Archbishops should, in practice, have thus shown favor to the heirs of the foundress, if deemed fit and qualified to be appointed. Similarly, the present Archbishop, while finding the infant plaintiff not qualified for the office of chaplain, nevertheless, as a matter of equity and grace, offered to defray the expenses of his education (R. 113). But the fact that their discretion was exercised in that manner in no way indicates that the several collating bishops ever considered that the Church was obligated so to do. In all probability, nothing was further from the minds of the collating bishops, of the chaplains appointed, or of any one else concerned, when the first five chaplains were appointed, than that they were thereby binding, or assuming an obligation of, the Roman Catholic Church forever to select an heir of the testatrix as beneficiary of the chaplaincy "without regard to his lack of ecclesiastical qualifications" (R. 328).

It is clear, moreover, that an unauthorized construction of the will could not, no matter how long continued, materially change or supplant the provisions of the trust as established by the testatrix herself and accepted by the Church. *Attorney General* v. *Corp. of Rochester,* 5 De G. M. & G. 797, 822; *Attorney General* v. *Corp. of Beverley,* 6 De G. M. & G. 256, 268; *Drummond* v. *The Attorney General,* 2 H. L. Cas. 837, 861.

III.

AS TO THE REQUIREMENTS OF THE ROMAN CATHOLIC CHURCH AND ITS CANON LAW FOR APPOINTMENT OF A COLLATIVE CHAPLAIN PRIOR AND SUBSEQUENT TO 1917.

The foregoing statement has shown that if we are limited to the record and exclude authorities of which the court below could well have taken judicial cognizance, the infant plaintiff was not qualified in any view of the case. It is not claimed that he was at all qualified under the Codex Juris Canonici of 1917, and as to the Canon Law prior to 1917 it is equally clear that he was not shown to be qualified so as to be entitled to appointment as a collative chaplain of the Roman Catholic Church. It should be borne in mind that the Archbishop, while expressly referring to the new provisions of the Canon Law, in his rejection of plaintiff, did not confine himself to that ground (R. 60).

There is no challenge, even if in reason there could be, of the right and duty of the Roman Catholic Archbishop of Manila prior to 1917 to exercise his discretion and judgment, and no authority has been or, we believe, after careful search, can be cited of any attempt heretofore to compel a bishop of the Roman Catholic Church by mandamus to appoint any particular candidate as a collative chaplain and overruling and nullifying the judgment or decision of the collating bishop as to the lack of qualifications of such candidate. It is indisputable that the plaintiff was not shown to have the slightest knowledge of "Christian Doctrine", and his lack of ordinary intelligence was conclusively demonstrated by his own testimony.

Reference, however, to competent writers on the Canon Law of the Roman Catholic Church prior to 1917 will likewise show the failure of the infant plaintiff to meet the elementary requirements of the Church for such a position.

We are not dealing with what are called "lay chaplaincies", but, under the express terms of the will, the deed of foundation and the decree of approval, with a "collative chaplaincy" with all that the term "collative" necessarily implies and with a foundation which indisputably became *"spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction"* (R. 57).

It cannot be doubted that, at all times prior to 1917, the Archbishop of Manila had to consider and determine the qualifications of collative chaplains, and it is proper to infer that even if they were not qualified, for example, by being already tonsured, at the moment of appointment, he satisfied himself that each had the vocation necessary for the priesthood and would in good faith at least promptly qualify as a cleric. There is no proof in the record that the prior chaplains had not shown to the satisfaction of the Roman Catholic Archbishop of Manila qualifications for the career of the priesthood at the time of their appointment as chaplains. It is hardly reasonable to assume that the first chaplain who was, in 1820, only fourteen years of age, was as immature in mind and as ignorant as the present plaintiff was shown to be by his own testimony. As for the other four chaplains, it is fitting and proper for the court to assume, in the absence of proof to the contrary, that a Roman Catholic Archbishop exercised due care in their appointment as collative or ecclesiastical chaplains. This court in the case of civil officers is constantly applying the presumption of the performance of a duty which in propriety should have been performed. *Amer. Ry. Exp. Co.* v. *Lindenburg,* 260 U. S. 584, 589; *Butler* v. *Maples,* 9 Wall 766, 777-8. It is a maxim that *Omnia praesumunter rite et solemniter esse acta,* and this presumption may with particular propriety be applied to

the present case. Grave disregard of the interests and spiritual dignity of their Church, ought not lightly to be imputed, upon dubious evidence, to high prelates of the Roman Catholic Church in the performance of their ecclesiastical duties.

The Catholic Encyclopedia, published in 1907 with the endorsement of the official Censor of the Church and with the Imprimatur of John Cardinal Farley, Archbishop of New York, is undoubtedly one of the most reliable American works upon Catholic doctrine, tradition and practice. This scholarly and accurate work defines a collative chaplaincy, such as is involved in the present case, in the following language (vol. iii, p. 580):

> "A chaplaincy is called collative if the founder bestows his goods for spiritual purposes in such a way that the bishop is to erect the foundation into a benefice, for no layman can erect a sacred edifice or institute a spiritual office without the episcopal authorization. Such benefices are called collative because the bishop collates or confers the right to hold them upon the acceptable candidate, even if such candidate has been presented or nominated by lay authority. To exclude the episcopal confirmation would be to make it impossible for the chaplaincy to be held as an ecclesiastical benefice. Hereditary or family chaplaincies are those to which, by the will of the founder, the holder of the benefice is to be nominated by the testator's heirs or assigns. In such cases also the confirmation of the bishop is of absolute necessity."

Other definitions of and qualifications for a collative chaplaincy in the Roman Catholic Church will be found in

the appendix (pp. 3, 24, 27, 29, 30, 33, 37-9, 42, 52), which should establish beyond reasonable doubt the inaccuracy of the statement in the petition for the writ of certiorari (p. 4), already noted, that "prior to 1918 the only relevant requirement was one of age".

As to the requisite elementary knowledge of "Christian Doctrine", its important scope will also be found fully discussed and illustrated in *The Catholic Encyclopedia* (vol. v, p. 75), which shows its vital and far-reaching importance in Catholic practice and tradition, dating back at least to the Council of Trent held in 1545-1563. Other definitions and commentaries will also be found in the appendix (pp. 3, 48-50, 52, 53).

The various Protestant Churches likewise regard the "Christian Doctrine" as fundamental. For example, Dorner's "System of Christian Doctrine", in four volumes, and "Elements of Christian Doctrine", by T. A. Lacey, Canon of Worcester, are used and studied, as we are advised, in a great many Protestant seminaries. Hence, it would be indefensible, if not preposterous, to treat as negligible the testimony showing that prior chaplains were required to know the Christian Doctrine (R. 138-9).

IV.

AS TO THE SURPLUS INCOME OF THE CHAPLAINCY OVER AND ABOVE THE EXPENSE OF THE SIXTY MASSES.

It remains to consider the plaintiff's contention that although he has not been appointed as chaplain and has not at any time served or been qualified to serve as such, he is nevertheless entitled to all the surplus income arising from the property of the chaplaincy since the termination of the service of the prior chaplain, his father, who resigned or renounced in 1910 (R. 35). Stated in other words, the plaintiff's contention substantially is that he has inher-

ited somehow through his father, still living, a property right, enforcible in the civil courts, not only to the office of chaplain, but, even if not qualified to act as such, to all the net income of this spiritual or ecclesiastical property since a date prior to his birth!

Plaintiff's right to receive any part of the income of this property at all, however, is entirely contingent upon and inseparable from his alleged right to be appointed as chaplain. Only as chaplain, or as one who has a legal right to be appointed as such, can he claim any possible interest under the will of the foundress, or any of the other documents of the foundation. It is generally held, in this connection, that the right of a minister to the temporal fruits of his office is dependent upon his continued "rightful incumbency". *State ex rel. Hynes* v. *Catholic Church,* 183 Mo. App. 190, 202; *Satterlee* v. *Williams,* 20 App. D. C. 393, 417; *Chase* v. *Cheney, supra,* 58 Ill. 509, 535-6. Indeed, the plaintiff's own application to the Archbishop was, in itself, an acknowledgment of the Archbishop's jurisdiction and power of appointment and of the necessity of the ecclesiastical intervention. This dependency of the income upon the office, moreover, must assuredly have been recognized by the fourth and fifth chaplains, who resigned from the chaplaincy, and thereafter received no income (R. 102, 104, 293). It is not suggested why these descendants of the testatrix should have renounced a life estate in a funded income, if their rights were not in any way dependent upon ecclesiastical qualifications, or upon continued "rightful incumbency" in the ecclesiastical office.

Reference to the ecclesiastical writings on the Canon Law of the Roman Catholic Church quoted or cited in the appendix at pages 25, 32, 40 and 54, moreover, will show that prior to the codification of the Canon Law in 1917, a collative chaplain would not have been entitled to appro-

priate the whole surplus income for his own purposes. On the contrary, the rule or law of the Roman Catholic Church was that the surplus must be devoted to pious uses and good works.

But aside from the Canon Law and even if the plaintiff had established an heritable right or interest in the property of the testatrix, enforcible in the civil courts and regulated by the civil law, which is, of course, denied, the fact that the increase of the income from the property donated to the Church in 1816-1820 was from 180 pesos in 1820 to 12,000 pesos in 1926 and that because of such increase there is now a large surplus over the usual charge or cost of having sixty masses said per annum, would not establish any legal heritable right whatever in the infant plaintiff or in any of his family or class to such surplus.

On the contrary, the rule obtaining in the secular courts is in this respect precisely the same as the Canon Law on the subject, viz., the surplus belongs to the Church, for its general pious purposes. The provision of the deed of foundation of 1820 for the establishment of the collative chaplaincy provided for in the will of Doña Petronila de Guzman (R. 53), that the property should not be converted into any other estate "even though it be of a more pious character, protesting that if the contrary should be done from now until then, he (the executor) declares null and without value or effect whatever may be done or executed contrary to the tenor of these presents" (R. 53), is a provision not to be found in the will or in the decree of approval of the chaplaincy. It must, by the most elementary principles of construction, be read in the light of the subject matter with which the parties were dealing at the time, namely, an income of 180 pesos per year (R. 52), which was to be devoted to the saying of masses. By no reasonable construction can this language be interpreted

as having been intended to govern the disposition of a large surplus fund, should there be any in the far future, a contingency probably outside the contemplation of the parties at that time. The provision dealt solely with the use and application of the existing annual income of 180 pesos, and required its application solely to providing for the saying of the sixty masses, but it did not deal with or provide for the application of any surplus.

In the case of *Mormon Church* v. *United States* (1890), 136 U. S. 1, the opinion of the court was written by Mr. Justice Bradley, who made the following statement at page 53:

> "By the Spanish law, whatever was given to the service of God, became incapable of private ownership, being held by the clergy as guardians or trustees; and any part not required for their own support, and the repairs, books and furniture of the church, was devoted to works of piety, such as feeding and clothing the poor, supporting orphans, marrying poor virgins, redeeming captives and the like. Partida III. tit. 28, ll. 12-15. When property was given for a particular object, as a church, a hospital, a convent or a community, etc., and the object failed, the property did not revert to the donor, or his heirs, but devolved to the crown, the church or other convent or community, unless the donation contained an express condition in writing to the contrary. Tapia, Febrero Novisimo, lib. 2, tit. 4, cap. 22, sections 24-26."

This decision was cited with approval by Mr. Chief Justice Fuller, delivering the unanimous opinion of the court in *Ponce* v. *Roman Catholic Church* (1908), 210 U. S. 296, 323.

In the case of *The Attorney-General* v. *The Minister, etc.*, 36 N. Y. 452, 457-8, a testator in 1684 devised property to a certain church, "for the support and maintenance of their minister," and in the course of time the income from the property became greatly enhanced and greater than was required to pay for the support and maintenance of four ministers. The question arose as to the disposition and control of the surplus, and the court, per Grover, J., said:

> "In this case the property was devised to the defendant (church), and so far as the parties here are concerned, it must be held that it has the legal title. That title is charged with a trust of which the defendant is the sole beneficiary. That trust is fully discharged. It turns out, doubtless contrary to the expectations of the donors, that by the rise in the value of real estate, after a great lapse of time, there is a large surplus. When the property was given, it would hardly pay one minister. The income now pays four, and leaves an annual surplus of seventy thousand dollars. This surplus, after the entire satisfaction of the trust charged upon the property, I think, follows the legal title, and therefore belongs to the defendant, not charged with any special trust, but to be used for any of the purposes authorized by the corporation."

See also, *Attorney General* v. *Rectors and Churchwardens of Trinity Church*, 91 Mass. 422, 444; *American Academy of Arts and Sciences* v. *Harvard College*, 78 Mass. 582, 597; *In re Campden Charities*, 18 L. R. Ch. Div. 310, 323-326; *Bishop of Hereford* v. *Adams*, 7 Ves. Jr. 324, 331; *Attorney General* v. *Wansay*, 15 Ves. Jr. 230, 234; *Attorney General* v. *Dixie*, 2 Myl. & K. 342.

Under the doctrine of these decisions, as applied to a case like the present, where a pious testatrix and her executor

have transferred property to the Roman Catholic Church for spiritual purposes, there can be no doubt that the intention of the donor is best served, not by turning over the surplus to her heirs after the lapse of a century, to be used by them for private ends, but by its retention and its continued application by the Church to pious purposes. No object is more clearly charitable, in the sense of the law, than the advancement of religion and education. *Fairbanks* v. *Lamson*, 99 Mass. 533. The testatrix' main and only discernible intent was undoubtedly to secure the saying of masses for her soul and the souls of the specified relatives; the chaplaincy was a mere means to that end, a method of insuring that the Church, upon the receipt of the property, would assume the perpetual obligation to have these masses said. Even the dissenting opinion of Mr. Justice Johns, rereferred to and approved in the plaintiff's brief (p. 2), recognizes this when it states (R. 359): "In truth and in fact the house in question was constructed for the sole and specific purpose of providing sufficient rental to insure the payment of the amount required to pay for the specified number of masses". Beyond that, the foundress probably had no intent or interest in the chaplaincy whatever, and certainly did not intend to make its creation the instrument by which her heirs might obtain surplus money free and clear of any trust, or any church supervision or regulation, and, indeed, in contravention of the rules of Canon Law, and even in the absence of the ecclesiastical qualifications for the office she created! In her mind, as in the law, the emoluments received by the chaplain flowed only from, and were inseparably dependent upon, the ecclesiastical office of chaplain, and ought to be applied by the chaplain, if any, or by the Church, to pious uses after complying with the

express direction of the testatrix as to sixty masses per annum for the repose of the souls of herself and the relatives she named.

V.

AS TO THE ALLEGED RIGHT OF PLAINTIFF OR OTHER HEIRS OF TESTATRIX AS A CLASS.

Although the now alleged heritable right of plaintiff and other heirs of the testatrix as a class was not the theory or ground upon which the infant plaintiff instituted and tried the legal proceeding for a mandamus and accounting in the court of original jurisdiction, the claim will be here considered and disposed of because of the suggestion in the opinion below (R. 339-340). This point legally speaking presents for decision a claim which must necessarily be based upon the contention that the infant plaintiff, or rather the class he is alleged to represent, *inherited* some civil property right of reversion.

It is, however, very clear that there is no such legal right to reversion.

The question, it is submitted, is concluded by the views expressed by this court in *Mormon Church* v. *United States*, 136 U. S. 1, 53, and *Ponce* v. *Roman Catholic Church*, 210 U. S. 296, 323. It is further discussed in Perry on Trusts (sixth edition), vol. ii, sec. 744, p. 1233, where the author accurately and concisely summarizes the sound doctrine of the authorities he cites, as follows:

> "Heirs and personal representatives of a donor have no beneficial interest reverting or accruing to themselves from the breach or non-execution of a trust for a charitable use.

See also *Sickles* v. *City of New Orleans,* U. S. Circuit Court of Appeals, Fifth Circuit (1897), 80 Fed. 868, 873; *Associate Alumni* v. *Theological Seminary,* 163 N. Y. 417, 421-2; *Brigham* v. *Peter Bent Brigham Hospital,* 134 Fed. 513, 517; *Goode et al.* v. *McPherson et al.,* 51 Mo. 126, 127; *Bridgeport Public Library and Reading Room* v. *Burroughs Home,* 85 Conn. 309, 316; *Strong* v. *Doty,* 32 Wis. 381, 386; *Trustees of Princeton University* v. *Wilson,* 78 N. J. Eq. 1, 6; *Sanderson* v. *White,* 18 *Pickering* (Mass.) 328, 333-4.

Furthermore, it must be obvious that, if this proceeding be regarded as a suit in which the plaintiff is asking the court to change the present proceeding for a mandamus and accounting into a suit in equity for relief to a class of heirs as alleged beneficiaries of a trust, the class concerned must necessarily be, not the heirs generally, but only such heirs as are qualified for appointment to the chaplaincy in question. It is not even hinted that there is any class or any present individual heir so qualified. Even if there were any such persons, it is elementary that a class suit cannot be successfully maintained by one who is not himself qualified to be a member of the class. *Watson* v. *National Life & Trust Co.,* 189 Fed. 872, 884. And that the present infant plaintiff is not qualified to be appointed or serve as a Roman Catholic collative chaplain has been conclusively shown above in the statement of the case and the foregoing points.

VI.

AS TO THE ALLEGED VIOLATION OF PLAINTIFF'S LEGAL RIGHTS UNDER THE TREATY OF PARIS, THE ORGANIC ACT AND THE CONSTITUTION OF THE UNITED STATES.

It should be hardly necessary to argue at any length the contentions of the plaintiff as to the Treaty of Paris of December 10, 1898, the Organic Act and the Constitution of the United States. As we have seen, the infant plaintiff has not been shown to be qualified to be appointed and serve as a Roman Catholic collative chaplain even under the Canon Law existing prior to its codification of 1917. Such codification is not in any true or reasonable sense retroactive, for it only applies in the future and does not purport to apply nor in fact or reason does it apply to chaplains already appointed and then serving as such. The qualification of chaplains to be thereafter appointed is a matter which is and ought to be within the power of the governing body of the Roman Catholic Church as of any other organized Church. The Roman Catholic Archbishop in 1820 did not enter into any contract which bound the Church not to change in the future, for centuries to come, the qualifications of its chaplains.

The present argument of plaintiff is adequately refuted by the learned justices writing the opinions of the court below (R. 337-8 and 349-51). Some of the pertinent language of Mr. Justice Street has already been quoted above (at p. 24 of this brief); and the language of the concurring opinion of Mr. Justice Malcolm is equally persuasive, viz.:

> "The portion of the Organic Act, the Act of Congress of August 29, 1916, section 3, paragraph 5, providing 'That no law impairing the obligation of con-

tracts shall be enacted' is not applicable since the 'law' there mentioned is an Act of the Philippine Commission or Legislature or an ordinance or resolution of a municipal council, and does not include an ecclesiastical law promulgated by the Pope for the Catholic world. The legislative power of the state has not undertaken, as in the *Dartmouth College* Case, to remodel the charter of an institution in most important particulars without the consent of the corporators. But following the theory pertaining to the impairment of the obligation of contracts, and by analogy applying the same principles to the canon law, it yet remains to be said that there are limitations on the application of the constitutional provision. Thus, as significant restrictions, the state cannot abridge or weaken any of the essential powers inherent in government; the state cannot abdicate its trust over property; and the Legislature cannot withdraw from its successors the power to take appropriate measures under the police power. Not only this, but charter contracts are subject to state regulation. A party operating under a charter must conform to such rules as the state may establish. Added conditions or duties may be imposed provided they do not amount to a change in the obligations or in the substantial rights of a party. *Changes may be made in the general laws even though incidental injury may result.*

"Construing the Canon Law as we must if we are to determine if it has retroactive and destroying effect, it is apparent that the highest power in the Catholic Church provided a law universal in character operative on all chaplaincies after it went into effect. The Pope did no more than did the civil authorities of Spain

when in 1841 they enacted a law regulating chaplaincies. As a matter of internal discipline, the Church was attempting to make certain that all persons filling chaplaincies had the necessary training to perform their duties. General regulations were prescribed to secure the ends for which chaplaincies were erected. In the particular case before us, the father chaplain, the incumbent of a 'collative chaplaincy', was expected by the testatrix 'to celebrate sixty masses annually', and it would not be at all unreasonable for the canon law to prescribe qualifications for the holder of the chaplaincy sufficient to permit him to say the masses personally. The will did not negative this in any manner when the property was turned over for spiritual uses. *As far as the will went, it intended to create a collative rather than a laical chaplaincy,* thus subjecting the institution to the authority and the laws of the Church, as every collative chaplaincy is so subjected."

CONCLUSION.

For the reasons above discussed, it is submitted, that the judgment of the Supreme Court of the Philippine Islands was right and should, therefore, be affirmed.

New York, April, 1929.

WILLIAM D. GUTHRIE,
GEORGE J. GILLESPIE,
of counsel for respondent-defendant
The Roman Catholic Archbishop of Manila.

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Supreme Court of the United States

OCTOBER TERM, 1928.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. [redacted] 6

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* Leon Gonzalez,

Petitioner,

v.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,

Respondent.

APPENDIX TO RESPONDENT'S BRIEF.

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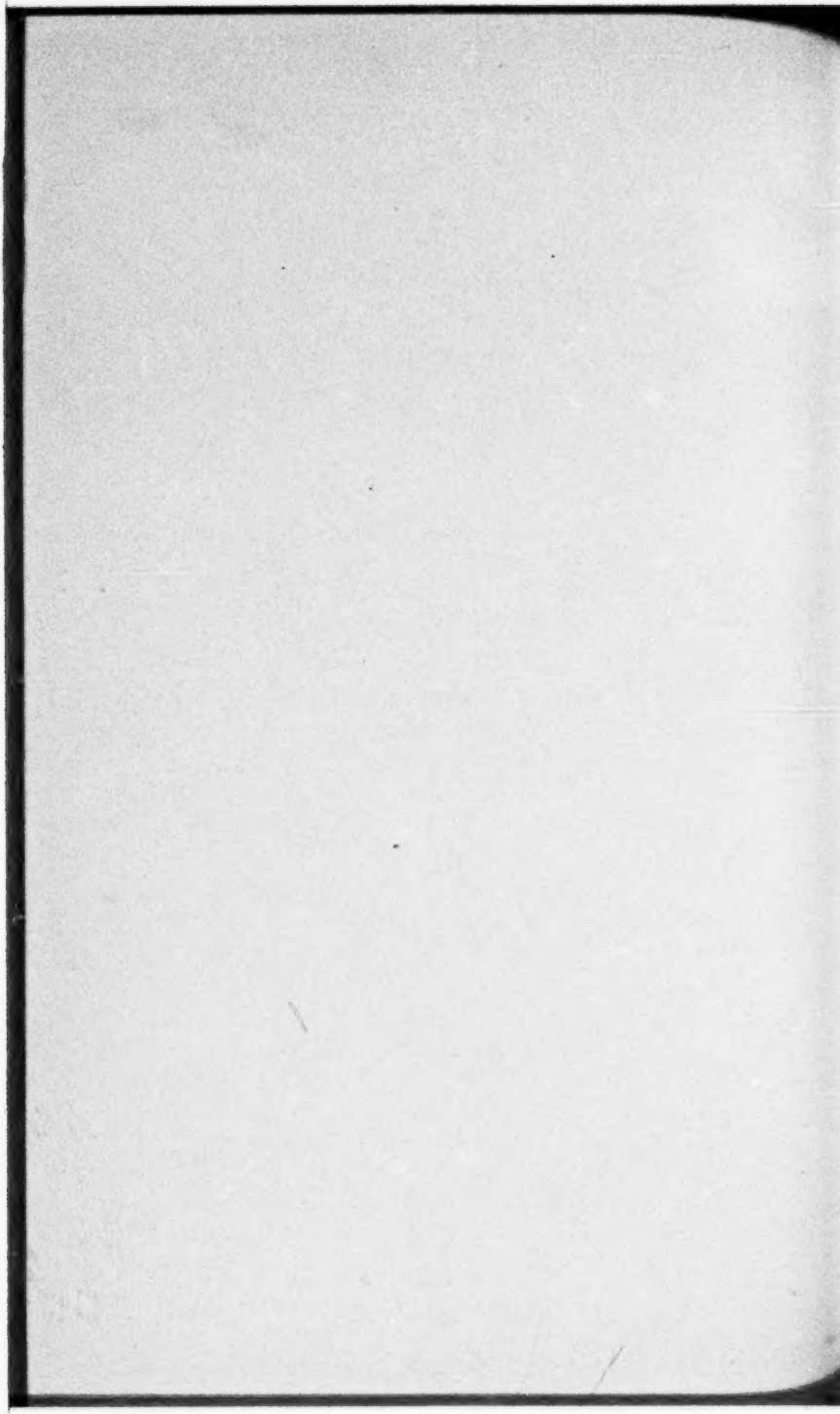

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I.

GLOSSARY OF SPANISH AND ECCLESIASTICAL TERMS.

Bachiller (Sp.):

"1. Bachelor, one who has obtained the first degree in the sciences and liberal arts" (Velasquez Dictionary of the Spanish and English Languages).

Benefice:

"2. An ecclesiastical living; a church office endowed with revenue for its proper fulfillment; the revenue itself" (The Century Dictionary and Cyclopedia).

Benefice, ecclesiastical:

"Según los teólogos es el cargo ú oficio en la Iglesia; constituido con autoridad del obispo y dotado de renta perpetua; mas segun los canonistas es una porcion de los bienes de la Iglesia, señalada á un eclesiástico para que goce de ella durante su vida por retribucion del servicio que hace ó debe hacer a la Iglesia en el ministerio á que es llamado; ó sea el derecho de usar de ciertas cosas de la Iglesia, concedido al clérigo para durante su vida por el cargo ú oficio que desempeña. Dicese derecho de usar, porque los cánones no conceden á los clérigos sino la facultad de tomar de la renta eclesiástica lo absolutamente preciso para su manutencion, debiendo repartir el resto entre los pobres." (Escriche, Paris, 1862, Diccionario Razonado de Legislación y Jurisprudencia, p. 366).

Translation.

According to theologists, it is a position or office in the church; instituted with authority of the bishop and vested with perpetual rents; but according to canonists it is a portion of the properties of the church set aside for an ecclesiastic in order that he may enjoy (goce) it during his life as reward for the services which he does or ought to do to the church in the ministry to which he is called; that is, the right to use of certain properties of the church, granted to a clergyman dur-

ing his life for the position or office which he occupies. It is said that it is the right to use (derecho de usar) because the canons do not give the clergymen but the right of using the ecclesiastical rents in what is absolutely necessary for his maintenance (manutencion), as the surplus must be distributed among the poor.

Benefice, secular:

"The benefice is said to be *regular* if held by one qualified to fulfil the duties of the office; *secular*, if held by a layman" (Century Dictionary).

Benefice, simple:

"A benefice involving no other obligation than service in the public offices of the church is *simple*" (Century Dictionary).

Canonical (See also Institution, canonical):

"2 . . . specifically regulated by or in accordance with the canons of the church" (Century Dictionary).

Capellan (Sp.):

"Chaplain; clergyman" (Appleton's New English-Spanish and Spanish-English Dictionary, 1928).

Capellania (Sp.):

"Chaplaincy" (Appleton's Dictionary).

Chaplaincy, Collative chaplaincy, Laical chaplaincy:

"A chaplaincy is an institution which has the obligation to celebrate or cause to be celebrated annually a certain number of masses in a determined church or altar, conforming to the will of the founder. A chaplaincy is either laical or collative.

"A *laical chaplaincy* is that instituted without the intervention of the ecclesiastical authority: it does not require a title in order to be ordained, and the possessor is only obligated to cause to be celebrated, or to celebrate, if he is a priest, a certain number of masses in accordance with the foundation. The laical or *mercenary* chaplaincies are not subject to the ecclesiastical authority, which, with regard thereto, has no other

right than to investigate if the obligations are fulfilled; and this is one of the characteristics which most distinguish the said chaplaincies from the collative chaplaincies."

"A *collative chaplaincy* is that instituted with the intervention of the ecclesiastical authority; and requires a title of ordination. It is called ecclesiastical because it is in the form of ecclesiastical benefice, and it is proper for the Bishop to confer it. When the foundation calls for relatives of the founder or of the persons whom he designated as trunk, to enjoy the chaplaincy, the latter is called *colativa familiar;* when individuals of a certain family are not called to the possession but the patron is authorized to appoint, then the chaplaincy is called *colativa simple* or *gentilicia*" (Alcubilla, Diccionario de la Administracion Española, fifth edition, Madrid, 1892, vol. ii, p. 259; Record, p. 360).

Chaplaincy, ecclesiastical and lay:

"Such chaplaincies are called either ecclesiastical or lay. They are ecclesiastical if the property donated by a founder has been formally erected into a benefice by the proper spiritual authority. If, however, the property designed for the purpose of procuring certain acts of Divine service has not received ecclesiastical erection it is called a lay chaplaincy" (Catholic Encyclopedia vol. iii, p. 580).

Christian Doctrine:

"Christian Doctrine is the Word of God revealed by Jesus Christ to the Church and received by her in all its fulness, guarded by her in all its integrity, and taught by her through the bishops in communion with the Pope . . ." (Taunton, London, 1906, The Law of the Church, p. 181).

Clergy:

"1. The clerical estate or order . . . the estate or office of a cleric or clerk (in ecclesiastical orders): the clerical office . . .

2. The clerical order; the body of men set apart by ordination for religious service in the Christian church; opposed to *laity*. . . ." (Oxford Dictionary).

Clergyman:

"1. A man of the clerical order; an ordained minister of the Christian church; one in holy orders. . . ." (Oxford Dictionary).

Clergy, Secular:

"Living in the world, not in the cloister; hence, not bound by monastic vows or rules, nor subject to a monastic order; used especially of parish priests and other non-monastic clergy, as distinguished from the monastic or *regular* clergy" (Century Dictionary, *sub. tit.*, "secular").

Cleric:

"Cleric, a person who has been legitimately received into the ranks of the clergy. By clergy in the strict sense is meant the entire ecclesiastical hierarchy" (Catholic Encyclopedia, vol. iv, p. 49).

Clericus (Latin):

Cleric; one who has been initiated in the first tonsure (see Canon 108, §1, *infra*, p. 10).

Colativa (Sp.):

"Collative" (Appleton's Spanish-English Dictionary).

Collate:

"6. *Eccles.* a. To confer (a benefice) on a person.

b. To appoint or institute (a cleric) to a benefice. Now said of an ordinary who institutes to a living in his own gift or patronage, or which has lapsed to him by neglect or disablement of the patron" (Oxford Dictionary).

Collative:

"A chaplaincy is called collative if the founder bestows his goods for spiritual purposes in such a way that the bishop is to erect the foundation into a benefice . . ." (Cath. Encyc., vol. iii, p. 580).

Collation:

"11. *Eccles.* a. The bestowal of a benefice or other preferment upon a clergyman.

b. (more usually) The appointment of a clergyman to a benefice; now *techn.* Institution by the ordinary to a living which is in his own gift" (Oxford Dictionary).

Congrua (Sp.):

"A competent sustenance assigned to him who is to be ordained a priest" (Velasquez Spanish Dictionary).

Diocese:

"3. The district, with its population, falling under the pastoral care of a bishop" (Century Dictionary).

Discipline:

"6. *Eccles.* The system or method by which order is maintained in a church, and control exercised over the conduct of its members; the procedure whereby this is carried out; the exercise of the power of censure, admonition, excommunication, or other penal measures, by a Christian Church. . . .

b. Hence, generally, the system by which the practice of a church, as distinguished from its doctrine, is regulated . . ." (Oxford Dictionary).

Doctrine:

"2. b. That which is taught or laid down as true concerning a particular subject or department of knowledge, as religion, politics, science, etc., a belief, theoretical opinion; a dogma, tenet" (Oxford Dictionary).

Institution, Canonical:

"Institution, Canonical (Lat. *institutio,* from *instituere,* to establish), in its widest signification denotes any manner, in accordance with canon law, of acquiring an ecclesiastical benefice. . . . In its strictest sense the word denotes the collation of an ecclesiastical benefice by a legitimate authority, on the presentation

of a candidate by a third person (institutio tituli collativa)" (Catholic Encyclopedia, vol. viii, p. 65).

Irregularity:

"5. *Eccles.*, in the Rom. Cath. Ch., infraction of the rules governing admission to the clerical office and discharge of its functions; a canonical impediment to reception of orders, exercise of clerical functions, or advancement in the church" (Century Dictionary).

Lay:

"1. Of persons: Belonging to the 'people' as contradistinguished from the clergy; not in orders, non-clerical.

2. Characteristic of, connected or concerned with, occupied or performed by, laymen or the laity" (Oxford Dictionary).

Mestizo:

"A Spanish or Portuguese half-caste; now chiefly, the offspring of a Spaniard and an American Indian" (Oxford Dictionary).

Order:

"6. *Eccles.* a. A grade or rank in the Christian ministry, or in an ecclesiastical hierarchy.

b. The rank, status, or position of a clergyman or ordained minister of the Church. Now always *pl.*, more fully *holy orders.* Hence the phrases *to take orders,* to enter the ministry or the Church, to be ordained; *in orders,* in the position of an ordained clergyman or minister of the Church; *in deacon's orders, in priest's* or *full orders.*

c. The conferment of holy orders, the rite of ordination; in the Latin Church reckoned as one of the seven sacraments" (Oxford Dictionary).

Ordinary:

"1. *Eccles.* and Common law. One who has, of his own right, and not by special deputation, immediate jurisdiction, in ecclesiastical cases, as the archbishop in a province, or the bishop or bishop's deputy in a diocese" (Oxford Dictionary).

Ordination:

"2. The act of ordaining, or conferring holy orders; appointment or admission to the ministry of the Church; the fact of being ordained" (Oxford Dictionary).

Padre:

" 'Father'; a title applied in Italy, Spain, Portugal and Spanish America, to the regular clergy; in India (from Portuguese), to a minister or priest of any Christian Church; and by natives (in speaking to Europeans) to native priests; hence, applied by English soldiers and sailors to a chaplain" (Oxford Dictionary).

Patron:

"4. *Eccles.*, one who has the right to present a clergyman to an ecclesiastical living, or to other preferment; the person who has the gift and disposition of a benefice" (Century Dictionary).

Patron, spiritual, lay, mixed:

"A spiritual patronage is one belonging to the incumbent of an ecclesiastical office, or established by the foundation of a church or a benefice out of ecclesiastical funds, or instituted by a layman and later presented to the Church. Thus the patronages in possession of secularized bishoprics, monasteries, and ecclesiastical foundations are regarded as spiritual. A lay patronage is established when an ecclesiastical office is endowed by anyone out of private means. A patronage is mixed when held in common by the incumbent of an ecclesiastical office and a layman" (Catholic Encyclopedia, vol. xi, p. 560).

Pension:

"Pension, Ecclesiastical, the right to a certain sum of money to be paid yearly out of the revenues of a church or benefice to a cleric, on account of just reasons approved by an ecclesiastical superior" (Catholic Encyclopedia, vol. xi, p. 645).

Priest:

"3. Specifically, in hierarchical churches, the second in rank in the clerical orders, between bishop and deacon" (Century Dictionary).

Procurator Fiscal } :
Promotor Fiscal }

"Fiscal Procurator. The duties of the fiscal procurator consist in preventing crime and safeguarding ecclesiastical law. . . . His office is comparable to that of the state attorney in criminal cases" (Catholic Encyclopedia, vol. vi, p. 82).

"Promotor Fiscal: A secular or ecclesiastical attorney-general" (Velasquez Spanish Dictionary).

Spiritualize:

"2. To invest with full spiritual or ecclesiastical status or rights. *Obs.* 1641 *Termes de la Ley* 126. If Chappels founded by Lay men were not approved of by the Diocesan, and as they terme it, spiritualized, they are not accounted Benefices" (Oxford Dictionary).

Spolium:

"In *eccles. law,* the property of a beneficed ecclesiastic which could not be legally disposed of by will at death" (Century Dictionary).

Theology:

"The science concerned with ascertaining, classifying, and systematizing all attainable truth concerning God and his relation to the universe; the science of religion; religious truth scientifically stated" (Century Dictionary).

Theology, dogmatic, moral, pastoral:

"*dogmatic theology,* that department of theology which has for its object a connected and scientific statement of theology as a complete and harmonious science as authoritatively held and taught by the church" (Century Dictionary).

"*moral theology,* a phrase nearly equivalent to moral philosophy, denoting that branch of practical theology which treats of ethics, or man's duties to his fellowmen" (Century Dictionary).

"*pastoral theology,* that branch of theology which treats of the personal and official duties of pastors, in distinction from systematic theology, which treats of religious doctrines" (Century Dictionary, *sub tit.* "pastoral").

Title:

"8. *Eccles.* A certificate of presentment to a benefice, or a guarantee of support required (in ordinary cases) by the bishop from a candidate for ordination" (Oxford Dictionary).

Tonsura (Sp.):

"1. Tonsure, the first clerical degree of the Roman Catholic Church" (Velasquez Spanish Dictionary).

Tonsure:

"Tonsure (Lat. *tondere,* 'to shear'), a sacred rite instituted by the Church by which a baptized and confirmed Christian is received into the clerical order by the shearing of his hair and the investment with the surplice" (Catholic Encyclopedia, vol. xiv, p. 779).

Tonsurista (Sp.):

One who has been tonsured (Cf. R. 99 and 322).

Vocation:

"1. The action on the part of God of calling a person to exercise some special function, especially of a spiritual nature, or to fill a certain position; divine influence or guidance towards a definite (esp. religious) career; the fact of being so called or directed towards a special work in life; natural tendency to, fitness for, such work" (Oxford Dictionary).

II.

CANONS OF CODEX JURIS CANONICI OF 1917.

Record, pp. 37-41 (Latin)	Record, pp. 92-98 (English)
Can. 108.* §1.	Can. 108,* Par. 1.
Qui divinis ministeriis per primam saltem tonsuram mancipati sunt, clerici dicuntur.	Clergymen are those already initiated in the first tonsure.
Can. 968.	Can. 968, Par. 1.
Sacram ordinationem valide recipit solus vir baptizatus; licite autem, qui ad norman sacrorum canonum debitis qualitatibus, iudicio proprii Ordinarii, praeditus sit, neque ulla detineatur irregularitate aliove impedimento.	Only baptized males may validly receive ordination; but those, who according to the holy canons have the necessary qualification *in the opinion of the ordinary* and have no irregularity or impediment whatever, may lawfully receive.
2.o Qui irregularitate aliove impedimento detinentur, licet post ordinationem etiam sine propria culpa exorto, prohibentur receptos ordines exercere.	Par. 2. Those who have some irregularity or impediment, although it be after the ordination and without their fault, cannot exercise the orders received.
Can. 976.* §1.	Can. 976,* Par. 1.
Nemo sive saecularis sive religiosus ad primam tonsuram promoveatur ante inceptum cursum theologicum.	No one can be promoted to first tonsure before he has begun the course in theology.
Can. 1354.	Can. 1354. Par. 1.
1. Unaquaeque dioecesis in loco convenienti ab Episcopo	Every diocese must have a seminary or college in an ap-

* Canons 108, par. 1, and 976, par. 1, are cited at record, pp. 59-60, in English. The original Latin text of these two canons does not appear in the record, but is here reproduced for convenience. The canons are printed in numerical order and the italics in English are as in record.

electo Seminarium seu collegium habeat in quo, pro modo facultatum et dioecesis amplitudine, certus adolescentium numerus ad statum clericalem instituatur.

2. Curandum ut in maioribus praesertim dioecesibus bina constituantur Seminaria: minus, scilicet, pro pueris litterarum scientia imbuendis, maius pro alumnis philosophiae ac theologiae vacantibus.

3. Si constitui Seminarium dioecesanum nequeat, aut in constituto Seminario conveniens institutio, praesertim in philosophicis ac theologicis disciplinis, desideretur, Episcopus alumnos in alienum Seminarium mittat, nisi Seminarium interdioecesanum vel regionale, auctoritate apostolica, constitutum fuerit.

Can. 1364. In inferioribus Seminarii scholis:

1.o Praecipuum locum obtineat religionis disciplina, quae, modo singulorum ingenio et aetati accomodato, diligentissime explicetur;

2.o Linguas praesertim latinam et patriam alumni ac-

propriate place selected by the bishop, wherein a certain number of youths may be trained for the clerical state according to the possibilities of the diocese and its extent.

Par. 2. Effort must be made that those larger dioceses will have two seminaries, one small for the literary career, and another large for the career of philosophy and theology.

Par. 3. If no diocesan seminary can be erected or if the one in existence is not sufficient, especially that for theology and philosophy, the bishop shall send the students to another seminary outside, unless there is one in the region or an interdiocesan one instituted by the Holy See.

Can. 1364. In the minor classes:

1. The religion subjects shall have the first place, according to the talent and age of each student.

2. The students shall carefully learn chiefly the lan-

curate addiscant;

guages of the country and latin.

3.o Ea in ceteris disciplinis institutio tradatur quae conveniat communi omnium culturae et statui clericorum in regione ubi alumni sacrum ministerium exercere debent.

3. In other subjects proper instruction shall be given according to the common culture and the state of the clergy of the region where they have to exercise their functions.

Can. 1365.

1. In philososophiam rationalem cum affinibus disciplinis alumni per integrum saltem biennium incumbant.

Canon 1365. Par. 1.

During two full years the students shall study philosophy and allied sciences.

2. Cursus theologicus saltem integro quadriennio contineatur, et, praeter theologiam dogmaticam et moralem, complecti praesertim debet studium sacrae Scripturae, historiae ecclesiasticae, iuris canonici, liturgiae, sacrae eloquentiae et cantus eclesiastici.

Par. 2. The career of theology shall last four years, and besides the dogmatic and moral theology it shall include principally the study of the holy scriptures, ecclesiastical history, canon law, liturgy, religious oratory and ecclesiastical music.

3. Habeantur etiam lectiones de theologia pastorali, additis practicis exercitationibus praesertim de ratione tradendi pueris aliisve catechismum, audiendi confessiones, visitandi infirmos, assistendi moribundis.

Par. 3. They shall, moreover, have lessons in pastoral theology, with practical exercises chiefly in the teaching of cathechism, hearing confession, visiting the sick and attending the dying.

Can. 1442.*

Beneficia saecularia nonnisi clericis e clero saeculari

Can. 1442.*

Simple chaplaincies or benefices are conferred upon

* Canon 1442 is cited at record, p. 59, in English. The original Latin text of this canon does not appear in the record, but is here reproduced for convenience.

conferenda sunt; religiosa sodalibus illius religionis, ad quam beneficia pertinent.

Can. 1448.

Ius patronatus est summa privilegiorum, cum quibusdam oneribus, quae ex Ecclesiae concessione competunt fundatoribus catholicis ecclesiae, capellae aut beneficii, vel etiam eis qui ab illis causam habent.

Can. 1455. Privilegia patronorum sunt.

1.o Praesentandi clericum ad ecclesiam vacantem vel beneficium vacans;

2.o Salva exsecutione onerum et honesta beneficiarii sustentatione, alimenta ex aequitate obtinendi ex ecclesiae vel beneficii reditibus, si qui supersint, quoties patronus ad inopiam nulla sua culpa redactus fuerit, etiamsi ipse iuri patronatus renuntiaverit in commodum Ecclesiae, vel pensio in limine fundationis ipsi patrono fuerit reservata, quae ad sublevandam eius inopiam non sufficiat;

clerygmen of the secular clergy.

Can. 1448.

The right of patronage is a series of privileges, with some charges which by grant of the Church are enjoyed by the catholic founders of a church, chaplaincy or benefice and their successors.

Can. 1455. The privileges of a patronage are:

1. That of presenting a *clergyman* for the church or office vacant.

2. After the charges are paid and a decent support of the beneficiary is covered, that of the right of receiving from the incomes of the church or foundation support by reason of equity if he is reduced to indigence without his fault, and this even if he had waived his right to patronage in favor of the church and even if in making the foundation he has reserved a pension to himself which proves insufficient.

3.o Habendi, si ita ferant legitimae locorum consuetudines, in sui patronatus ecclesia stemma gentis vel familiae, praecedentiam ante ceteros laicos in procesionibus vel similibus functionibus, digniorem sedem in ecclesia, sed extra presbyterium et sine baldachino.

3. To have, if permitted by the custom, the coat of arms of the family in the church of his patronage, and the preferential place over other Christians in the processions and functions and a special seat in the church, but outside of the presbyterium and without canopy.

Can. 1457.

Praesentatio, nullo iusto obstante impedimento, sive agatur de patronatu laicali sive de ecclesiastico et mixto, fieri debet, nisi brevius tempus lege fundationis vel legitima consuetudine praescriptum fuerit, saltem intra quatuor menses a die quo is, cui ius est instituendi, patronum certiorem fecerit de vacatione beneficii et de sacerdotibus qui in concursu fuerunt probati, si agatur de beneficio quod per concursum conferri debet.

Can. 1457.

The presentation, unless prevented by a just cause, whether in a laical patronage, ecclesiastical or mixed, must be made, if the law of the foundation or the lawful custom does not prescribe a shorter period, within the four months following the day when he who is called upon to make the institution notifies the patron that the position is vacant, etc.

Can. 1458.

1. Si intra praescriptum tempus praesentatio facta non fuerit, ecclesia vel beneficium pro eo casu fit liberae collationis.

Can. 1458.

Par. 1. If within the period fixed, no presentation is made, *the church or institution is for that time one of free collation.*

2. Si vero lis, quae intra utile tempus dirimi nequeat, exoriatur sive circa ius prae-

Par. 2. If there is some controversy . . . the collation is suspended until the

sentandi inter Ordinarium et patronum vel inter ipsos patronos, sive circa ius praelationis inter ipsos praesentatos, suspendatur collatio usque ad finem controversiae, et interim, si opus sit, oeconomum ecclesiae, vel beneficio vacanti Ordinarius praeficiat.

end thereof and in the meantime the ordinary shall appoint a vicar.

Can. 1464.

1.o Praesentatio fieri debet loci Ordinario, cuius est iudicare utrum idonea sit persona praesentata.

Can. 1464.

Par. 1. The presentation must be made to the Ordinary of the place, who has *the right to judge* whether the person presented is fit or not.

2.o Ordinarius ad suum formandum iudicium, debet ad norman can. 149 de persona praesentata diligenter inquirere et oportunas noticias, etiam secretas, si opus fuerit, assumere.

Par. 2. In order to form such an opinion, the Ordinary must make inquiry, as required in Can. 149, about the person presented, and if necessary, seek other proper reports even secret.

3.o Ordinarius non cogitur patrono patefacere rationes cur personam praesentatam admittere non possit.

Par. 3. The ordinary *is not bound to state to the patron the reasons* why he cannot admit the person presented.

Can. 1465.

1. Si praesentatus non idoneus fuerit repertus, patronus, dummodo tempus utile ad praesentandum sua negligentia lapsum ne sit, potest alium intra tempus

Can. 1465.

Par. 1. If the one presented is not found fit, the patron may, unless time fixed in Can. 1457 has elapsed through his fault, present another one within the same

de quo in can. 1457 praesentare; sed si ne hic quidem idoneus repertus fuerit, ecclesia vel beneficium pro eo casu fit liberae collationis, nisi patronus vel praesentatus intra decem dies a significatione recusationis recursum a iudicio Ordinarii ad Sedem Apostolicam interposuerit; quo pendente, suspendatur collatio usque ad finem controversiae et interim, si opus sit, oeconomum ecclesiae vel beneficio vacanti Ordinarius praeficiat.

period. If neither the latter is found fit, the church or foundation becomes this time of free collation, unless the patron or the one presented, within ten days from notice to him of the rejection, should file an appeal *to the Apostolic See from the judgment of the ordinary;* in the meantime the collation is suspended, and a vicar appointed to act as chaplain ad interim of the church or foundation.

2. Praesentatio, labe simoniaca infecta, est ipso iure irrita, et etiam institutionem forte subsecutam irritam reddit.

Par. 2. The presentation made for money is absolutely worthless, just as the institution that follows it.

Can. 1466.

1. Legitime praesentatus, et idoneus repertus, acceptata praesentatione, ius habet ad canonicam institutionem.

Can. 1466.

Par. 1. After *the presentation is admitted,* the person lawfully presented is entitled to the canonical institution.

2. Ius concedendi canonicam institutionem proprium est Ordinarii loci, non autem Vicarii Generalis sine mandato speciali.

Par. 2. The right to grant the canonical institution belongs to the ordinary, not the vicar-general without special mandate.

3. Si plures et omnes idonei praesentati sint, Or-

Par. 3. If several persons are presented and all are fit

dinarius eligit quem magis idoneum in Domino iudicaverit.

Can. 1481.

Deductis cuiuslibet generis expensis et salvo praescripto can. 472, n. I, fructus beneficii vacantis pro altera dimidia parte accrescunt doti beneficii vel massae communi, pro altera cedunt fabricae ecclesiae seu sacrario, salva legitima consuetudine qua fructus omnes in bonum commune dioeceseos erogentur.

Can. 1560.

Forum necessarium habent:

1.o Actiones de spolio, coram Ordinario loci rei sitae;

2.o Causae respicientes beneficium, quamvis non residentiale, coram Ordinario loci beneficii;

3.o Causae quae versantur circa administrationem, coram Ordinario loci ubi administratio gesta est;

the ordinary shall choose the one he believes in conscience to be the best of them.

Can. 1481.

After deducting the expenses of the acting chaplain, one-half of *the incomes of the vacant foundation shall be added to the endowment or capital of the institution, and the other half shall be used in the repair of the church and the sacristy, unless there is the custom of using the whole for some good common to the diocese.*

Can. 1560.

The following have necessary forum:

1. Actions of spolium, before the ordinary of the place where the thing is found.

2. Cases relative to *some benefice, although not residential,* before the ordinary of the place of the benefice.

3.* Cases which deal with administration before the ordinary of the place where the administration was conducted.

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* Not in record.

4.o Causae, quae respiciunt hereditates aut legata pia, coram Ordinario loci domicilii testatoris, nisi agatur de mera exsecutione legati, quae videnda est secundum ordinarias competentiae normas.

4. Cases relative to inheritance or pious legacies, before the ordinary of the place of the testator unless it is merely one for the execution of the legacy, for in that case the ordinary rules of jurisdiction govern.

III.

OPINION OF DR. ANTONIO S. de BUSTAMANTE, OF HAVANA, CUBA, AS TO SPANISH LAW.

MEMORANDUM AS TO SPANISH LAW IN AND PRIOR TO 1898 CONCERNING QUESTIONS INVOLVED IN THE SUIT BROUGHT IN BEHALF OF RAUL ROGERIO GONZALEZ, BY HIS GUARDIAN *AD LITEM*, LEON GONZALEZ, AGAINST THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

Matters of Fact.

FIRST: On March 13th, 1816, Doña Petronila de Guzman executed, in the Philippine Islands, her testament, and by clause nine thereof she devised a house and ground owned by her for the creation or foundation, immediately after her decease, of a collative chaplaincy, and appointed as first chaplain her great grandson, Don José Telesforo de Guzman, and in default of the latter, her nearest relative, and in default of the latter, a collegian of San Juan de Letran (St. John Letran) being an orphan, half-breed, and native of the same town (R. 33).

SECOND: In a petition filed, April 26th, 1820, by José Telesforo de Guzman, Executor of the estate of said Petronila de Guzman, it was duly prayed that the property destined for the chaplaincy be segregated from temporal properties and transferred to the spiritual properties of the Archbishopric and that canonical collation be conferred on the chaplain named in the will (R. 53).

THIRD: On May 12th, 1820, the Metropolitan Archbishop of the Philippine Islands and the Apostolic Governor of the vacant Archbishopric of the Holy Name of Jesus of Cebú, vested with ecclesiastical jurisdiction in the premises, upon said petition of said Don José Telesforo de Guzman, duly approved the foundation of the chaplaincy in all the terms and conditions of the testament and petition above cited, and in his decree of approval duly converted the charge on said property "into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57).

From these facts relating to the foundation of the chaplaincy now in question, the following legal problems arise with regard to the law of Spain in and prior to 1898, viz:

1. To what class does the chaplaincy belong in the Roman Catholic Church as recognized by the law of Spain?

2. Could the special qualifications prescribed by the new canonical legislation contained in the "CODEX JURIS CANONICI" of Benedict XV (1917) have been required of any chaplain presented for appointment to fill a vacancy if existing prior to 1898?

3. To what purposes would the income of the chaplaincy, in excess of the amount necessary for the saying of the masses ordered by the testatrix, have to be applied during the continuance of a vacancy in the chaplaincy?

(1) To what class does the chaplaincy belong in the Roman Catholic Church as recognized by the law of Spain?

The Roman Catholic Church during the whole of the Nineteenth Century recognized two principal kinds of chaplaincies: the ecclesiastical or collative and the lay. The ecclesiastical or collative differed from the lay in that the former had necessarily to fulfill the following requisites:

1. Canonical establishment, after action and approval by the Bishop.

2. Collative and canonical appointment of chaplain by the Bishop.

3. The title to the property of the foundation had to be vested by deed in the Church.

Such collative chaplaincies could be, in turn, either *colativa simple* or *gentilicia,* with free appointment in the judgment and discretion of the bishop, or "*colativa familiar*" whereby the chaplain must have been an individual of a certain family, but in both cases the collation or appointment had to be made by the bishop.

This classification of chaplaincies is the one made by the most authoritative writers of treatises on the subject, and amongst them may be mentioned the following reliable works:

"Lecciones de Disciplina Eclesiastica", by Drs. Gomez Salar and La Fuente, Madrid, 1880, second volume, page 140, etc.

Gomez Salazar: "Instituciones de Derecho Canónico", Madrid, 1883, third volume, page 542.

Morales: "Tratado de Derecho Eclesiastico General y Particular en España", Sevilla, 1884, volume four, page 39, and succeeding ones.

Salazar: "Procedimientos Eclesiasticos", Madrid, 1868, volume four, page 337, etc.

Campos: "Capellanias Colativas en España", Madrid, 1910, page 26, etc.

Martiny: "Legislación vigente sobre Capellanias Colativas en Cuba", Havana, 1916, page 23, etc.

Almost all these writers maintain that if the founder expresses himself in ambiguous words, so that it is difficult to know the nature of the chaplaincy, and documents are lacking to solve this doubt, it must be considered an ecclesiastical chaplaincy or *colativa simple* to be filled in the judgment or discretion of the Bishop. This is also the opinion of Vechiotti, the well-known authority, Inst. Canon., book three, chapter second, paragraph 12.

In the light of these authorities, it is evident that the chaplaincy in question is of a collative character and that the Bishop must therefore appoint the chaplain in the exercise of ecclesiastical jurisdiction.

It is so called by the testatrix in her last will, and the Apostolic Governor in approving the foundation on May 12th, 1820, expressly converted the devised property "into spiritual property of a perpetual character" and declared that it shall be "subject to the ecclesiastical forum and jurisdiction" (R. 57).

In addition to this, the declaration made at the time with respect to the properties being converted into spiritual ones, removes all possibility of its being considered a lay chaplaincy, and clearly converts it into an ecclesiastical benefice according to long established Spanish Law in force

for generations prior to 1898 and then applicable to the Philippine Islands. This is fully recognized by the writers cited above.

2.—Could the special qualifications or requirements prescribed by the canonical legislation contained in the Codex Juris Canonici of Benedict XV (1917) have been required of any chaplain presented for appointment to fill a vacancy existing prior to 1898?

The foundress does not specify any of the qualifications of the chaplain, and, consequently, she left this matter to the ecclesiastical judgment and regulation. No private individuals ever had power to restrict the right of the Church to decide who should or might be clerics or prescribe their necessary qualifications. A variation in these qualifications would not in the least alter the will of the foundress of the chaplaincy, and it cannot be said that possible aspirants thereto have ever acquired any legal or ecclesiastical right to any particular or limited qualifications.

This was the accepted practice in Spain having legal force in 1898, when the Philippine Islands were transferred to the United States, and it is established by the fact that the Papal Bull "Apostólici Ministeri" of the Pontiff Inocencio XIII, dated May 13th, 1723, established a series of new rules expressly applicable to Spanish benefices and for the election of those who were to serve in them without any recognition of acquired rights to appointment.

This said Papal Bull, in article number one, says:

"First, the fathers of the aforesaid 'Concilio Tridentino' by divine inspiration, having very wisely recognized the great importance to the Christian State of the right selection of those to whom the sacred ministries are to be intrusted so that their lives may serve as a model to others of the faithful that they may take them for an example and, therefore, it having been determined by a proper resolution of the same fathers, that none should be admitted to the active clergy for the first tonsure except those of whom it might with probability be assumed that they had chosen this condition in life not merely with the intent of freeing

themselves from secular jurisdiction, but with the sincere spirit of giving themselves to the service of God, we desire that, for carrying into effect said sanction of the Council, none of the Archbishops and Bishops of the Kingdom of Spain shall admit, in future, for the first tonsure, any except those to whom an ecclesiastical benefice has to be conferred immediately, or to those of whom it is evident that they are engaged in studies, so that they appear to be already on the way to receive minor orders and later major orders; or, finally, to those they deem it advisable to delegate to the service and ministry of some church."

Article number two of said Papal Bull of 1723 further provides as follows:

"And likewise all those who desire to be advanced to the first tonsure, as also to minor orders, must keep the rule given therefor by the same Concilio Tridentino; that is to say, no one shall be ordained who may not be of use or necessary to its churches, *in the judgment of his bishop,* and, conjointly, that he shall not fail to be assigned to such churches or places of devotion for whose use or need he was ordained and where, for that purpose, he shall perform the functions proper to his office. But if there be found at present some of the tonsured, or those promoted to minor or major orders who may not be assigned to some specific church or place of devotion, the bishops may at once provide such assignment omitted by them, or by their predecessors, not only with respect to those ordained for major orders, even though they be presbyters, but also with respect to those having only the first tonsure, or minor orders, who also possess an ecclesiastical benefice; but for the rest who, as has been said, may be tonsured only, or have taken minor orders and without a benefice, those only shall be assigned whom they judge useful or necessary to their churches. Furthermore we permit that the fulfilment of said assignment may be delayed for a space of time that may seem convenient to the bishops themselves, with regard to those who, on account of their studies, either in a public

university or in private, or for other reasonable causes, approved or worthy of approval by the bishop, may be absent from such bishopric, wherein they were tonsured or ordained."

The above provisions were partly confirmed by the Concordat signed on March 16th, 1851, between the Holy See, Pontiff Pius IX, and the Queen of Spain. Article 4 of this Concordat reads as follows:

"In all the other cases that belong to the power and exercise of ecclesiastical authority and to the Ministry of Holy Orders, the Bishops and the clergy dependent thereon shall enjoy the full liberty established by the sacred canons."

And Article 43 adds:

"Everything else that pertains to persons or things ecclesiastical provided for in the foregoing article shall be directed and managed, pursuant to the discipline of the Church, as canonically in force."

There was a supplemental agreement between the Holy See and Spain, concerning the government of chaplaincies, which was enacted in Spain as a law on June 24th, 1867. This agreement provided in Article 17, referring to collative family chaplaincies as follows:

"These chaplaincies shall be provided for precisely within the canonical provisions. Minors of less than fourteen years shall not be appointed to fill them."

"Those appointed to the same shall continue the ecclesiastical career in a seminary, either as day pupils, or boarding pupils, or as the Head of the Diocese may order, according to the abundance or scarcity of means for that purpose; and likewise they shall, of necessity, be bound to holy orders, when they are of canonical age, under penalty, otherwise, of having the chaplaincy declared vacant."

"The Bishops of the Diocese shall decide on the obligations, studies and other requirements and qualifications, not expressed in the present Agreement, or in the instructions that must be given for its execution, using in such case the same apostolic power given in Articles 15 and 21."

Third: To what purposes would the income of the chaplaincy, in excess of the amount necessary for the saying of the masses ordered by the testatrix, have to be applied during the continuance of a vacancy in the chaplaincy?

In general, the proceeds of every ecclesiastical benefice should be received by the beneficiary who, in the first place, has to fulfill the obligations of such benefice and attend later to what the canonical law calls his "congrua"—that is, his reasonable sustenance; in other words the material needs or essentials of life of the chaplain.

The residue, if there be any, must be devoted by the beneficiary to pious uses. This follows from the canons of the Council of Trent and likewise particularly in and by Chapters 1 and 12 of the "Reformatione", Sections 23 and 24, respectively.

In case of the lack of a chaplain, or in case of non-acceptance of the appointment which the Bishop is free to make, there be surplus income of the chaplaincy, it accrues directly to the Church, and the latter may apply the surplus in pious uses, as it deems proper, after first complying with any specific direction, such as the saying of masses in the present case.

The following authorities may be cited in support of said proposition, namely, that any and all surplus income accruing during a vacancy in the chaplaincy from spiritual property of a collative chaplaincy and that, too, whether such chaplaincy be *colativa simple* or *gentilicia* on the one hand, or *colativa familiar* on the other hand, must be applied to pious uses, such, for example, as education.

Vechiotti: Inst. Canon., book three, chapter second, paragraph 12.

Juan Pedro Morales: Tratado de Derecho Eclesiastico General, volume iv, page 289 and following pages.

Finally, I have examined the record before the Supreme Court of the United States, No. 226, on writ of certiorari to the Supreme Court of the Philippine Islands, and, after many years of study of and practice under Spanish law, I certify my opinion that under Spanish law in force during

and prior to 1898, the civil or secular courts would not have had jurisdiction to compel a bishop to appoint a particular person chaplain of a collative chaplaincy irrespective of his canonical or ecclesiastic qualifications for such office, or to order and compel a bishop to pay to a private person, whether or not heir of a founder, any part of the income derived from property which had theretofore been duly converted into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction. The jurisdiction of the Church authorities would have been held to be ample and exclusive, there being no arbitrary abuse of ecclesiastical discretion and no repudiation or denial of the trust, according to the terms and express requirements of the documents establishing the collative chaplaincy.

ANTONIO S. DE BUSTAMANTE.

Havana, March 16th, 1929.

IV.

"THE CANONS AND DECREES OF THE COUNCIL OF TRENT" TRANSLATED BY REV. J. WATERWORTH (London, 1848).

Session VII, Decree on Reformation, Ch. XIII (Waterworth, p. 64):

"Persons presented, or elected, or nominated by any ecclesiastics soever, even by Nuncios of the Apostolic See, shall not be instituted, or confirmed in, or admitted to any ecclesiastical benefices whatsoever, even under the plea of any privilege soever, or custom, which may even have a prescription from time immemorial, unless they shall have been first examined, and found fit, by the Ordinaries of the places. And no one shall be able to screen himself, by means of an appeal, from being bound to undergo the examination. Those, however, are to be excepted, who are presented, elected, or nominated by universities, or by colleges for general studies."

Session XXIII, Decree on Reformation, Ch. IV (Waterworth, p. 179):

"None shall be initiated by the first tonsure, who have not received the sacrament of Confirmation; and who have not been taught the rudiments of the faith; and who do not know how to read and write; and in whose regard there is not a probable conjecture, that they have chosen this manner of life, that they may render unto God a faithful service, and not that they may fraudulently withdraw themselves from secular jurisdiction."

Session XXIII, Decree on Reformation, Ch. VI (Waterworth, p. 180):

"No one, after being initiated by the first tonsure, or even after being constituted in minor orders, shall be able to hold a benefice before his fourteenth year. Further, he shall not enjoy the privilege of the (ecclesiastical) court,

unless he have an ecclesiastical benefice, or, wearing the ecclesiastical dress and tonsure, he serves in some church by the bishop's order, or lives with the bishop's permission in an ecclesiastical seminary, or in some school, or university, on the way as it were to receive the greater orders. As regards married clerks, the constitution of Boniface VIII, which begins, *clerici qui cum unicis,* shall be observed; provided the said clerks, being deputed by the bishop to the service or ministry of some church, serve and minister therein, and wear the clerical dress and tonsure; no privilege or custom, even immemorial, availing any one herein."

Session XXIII, Decree on Reformation, Ch. VIII (Waterworth, p. 180):

"The holy Synod, adhering to the traces of the ancient canons, ordains, that when a bishop has arranged to hold an ordination, all who may wish to be received into the sacred ministry shall be summoned to the city, for the Thursday before the said ordination, or for such other day as the bishop shall think fit. And the bishop, calling to his assistance priests and other prudent persons, well skilled in divine law, and of experience in the constitution of the church, shall diligently investigate and examine the parentage, person, age, education, morals, learning, and faith of those who are to be ordained."

Session XXV, Decree on Reformation, Ch. V (Waterworth, p. 259):

"Reason requires, that, in regulations which have been well established, no alteration be made by any ordinances to the contrary. Whenever, therefore, by virtue of the erection or foundation of any benefices, or in consequence of other regulations, certain qualifications are required, or certain obligations are attached thereunto, they shall not be derogated from in the collation, or in any other arrangement whatsoever in regard of the said benefices. The same also shall be observed as to prebends assigned to teachers of theology, masters, doctors, priests, deacons, or subdeacons, whenever such prebends have been established in

this manner, in such sort that, in no provision whatever shall anything be altered in regard of the said qualifications and orders; and any provision made otherwise shall be accounted surreptitious."

Session XXV, Decree on Reformation, Ch. VII (Waterworth, p. 261):

"Whereas, as regards ecclesiastical benefices, whatsoever carries with it the appearance of hereditary succession is a thing odious to the sacred constitutions, and contrary to the decrees of the Fathers; no Access or Regress* in regard of any ecclesiastical benefice of whatsoever quality, shall, even though by consent, be henceforth granted to any individual; nor shall those already granted be suspended, extended or transferred. And this decree shall have effect in regard of all ecclesiastical benefices whatsoever, and even in cathedral churches, and as regards all manner of persons soever, even though distinguished with the honour of the cardinalate."

Session XXV, Decree on Reformation, Ch. IX (Waterworth, pp. 264-5):

"Even as it is not just to take away the legitimate rights of patronage, and to violate the pious intentions of the faithful in the institution thereof, so also neither is it to be suffered, that, under this pretext, ecclesiastical benefices be reduced to a state of servitude, as by many is impudently done."

"*Furthermore, it shall be lawful for the bishop to reject the persons whom the patrons have presented, if they be not fit.* But if the institution belongs to inferior (ecclesiastics), they (the presentees) shall nevertheless be examined by the bishop, pursuant to what has elsewhere been ordained by this Holy Synod; otherwise the institution made by those inferior shall be null and void."

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* *Access*, right of accession to a benefice, at some future period; *Regress*, right of returning to a benefice vacated, in case of death, etc., of the actual incumbent.

V.

EXTRACTS FROM WRITERS ON CANON LAW.

SCHMALZGRUEBER, JUS ECCLESIASTICUM, SEU DECRETALIUM GREGORII IX, BOOK 2, PART 3, TITLE 26, PAR. 2, 29, INGOLDSTADT, 1712.

Latin.

"A Laicis praescribi non possunt *Jura Ecclesiastica,* et Spiritualia, e. g. jus eligendi, aut conferendi Beneficia Ecclesiastica, Jus cognoscendi, et judicandi causas Ecclesiasticas, et Clericorum et quia a Laicis possideri nequeunt c. causam 7. b. t. Hinc. etsi mille anni transierint, Laici ejusmodi Jura non praescribent. Jura, dixi; nam bona Ecclesiastica, quae Sacra non sunt, praescribi a Laicis possunt, sed indigent longiori tempore."

English.

Ecclesiastical and spiritual rights cannot be prescribed by laics, for example, the right to choose or to confer ecclesiastical benefices, the right to hear and judge ecclesiastical cases, or clerical, and because such rights cannot be possessed by laics. Hence even after a thousand years they cannot be prescribed by laics. I speak of rights; because ecclesiastical goods which are not sacred can be prescribed by laics but they need longer time.

WERNZ, "JUS DECRETALIUM" (Prati, 1915 Edition).

"*Personae instituendae* in officiis ecclesiasticis sunt solummodo illi, qui iam actu sunt *clerici.* Quare *laico* institutio collativa tituli *dari* non potest. Clericus autem in ordinibus *minoribus* constitutus et forte praesentatus ad officium ecclesiasticum, cui adnexus est ordo sacer, institutionis obtinendae incapax non est, dummodo alias sit idoneus et intra *annum* a die obtentae paci-

Only such persons as are already actually clerics may be instituted in ecclesiastical offices. Wherefore institution collative of title cannot be given to a laic. However a cleric ordained in minor orders and perchance presented for ecclesiastical office for which a sacred order is required is not incapable of institution if he be otherwise fitted and can be advanced to the order re-

Latin.

ficae possessionis officii computandum ad sacrum ordinem officio suo adnexem promoveri valeat. At legi speciali aut instrumento fundationis omnino standum est, si ordo ipso tempore *praesentationis* vel institutionis actu iam receptus expresse requiratur. Minime vero in ecclesiis vel officiis ecclesiasticis institui possunt clerici unius *originis* vel *nationis* aliis de iure exclusis, sed generatim instituendi sunt clerici litterati et idonei ex sanctionibus iuris communis, ex lege fundationis atque iure speciali, nisi in limine fundationis officium clericis tantum idoneis certarum familiarum vel regionum fuerit reservatum, aut Sedes Apostolica v. g. in concordatis singularia dederit privilegia vel consuetudines ratas habuerit.

"Denique in officio ecclesiastico nemo *seipsum* instituere potest; etenim ad vitandam speciem turpis ambitionis inter Praelatum instituentem et clericum institutum tanquam inter personam dantem et accipientem distinctio intercedat necesse est" (Vol. ii, p. 196).

English.

quired for his office within a year counting from the day of obtaining peaceful possession of the office. But a special law or instrument of the foundation must prevail if the order be required at the very time of presentation or institution. On no account can clerics of a given origin or nation be instituted in churches or ecclesiastical offices to the lawful exclusion of others, but in general clerics who are lettered and filled according to the sanctions of common law, the law governing the foundation and special law unless by the provision of the foundation the office be reserved for deserving clerics of certain families or places, or the Apostolic See by concordats, for instance, may have given special privileges or approved established customs.

Finally no one can institute himself in an ecclesiastical office since to avoid the appearance of the torpitude of ambition it is essential that there should be between the instituting Prelate and the instituted cleric the distinction in person of giver and recipient.

Latin.	English.
"Similiter reductio onerum fundationis pro *tempore praeterito*, quae potius remissio vel condonatio vel absolutio dicitur, soli Sedi Apostolicae est reservata. Quae absolutio a Romano Pontifice concedi tantum solet, si *aequa causa* subest v. g. paupertas et egestas legatarii, et insuper *bona fides* adfuit, atque reditus non desunt, quibus praeteritae omissiones suppleri possint" (vol. iii, num. 207).	Similarly, the reduction of the charges of the foundation for time past, which more properly is denominated remission, condonation or absolution, is reserved solely to the Apostolic See. This absolution is usually given only by the Roman Pontiff upon just cause, i. e. the poverty or necessity of the legatee, and moreover if there was good faith and there are rents available with which to supply past omissions.

"THE LAW OF THE CHURCH" BY ETHELRED TAUNTON, PRIEST OF THE ARCHDIOCESE OF WESTMINSTER (London, 1906).

A cyclopaedia of canon law for English-speaking countries.

"A benefice is a perpetual right, established by the authority of the Church, of receiving, on account of some spiritual office, an income which comes from ecclesiastical property" (p. 70).

"The spiritual offices are such as: to celebrate Mass, administer the Sacraments, preach the word of God, recite the Divine Office, etc.

"The benefice consists in the right to the income, not to the capital, which remains under the *dominium* of the Church. Hence the holder of a benefice has a direct *dominium* over the income or *fructus*, and, although he may have private means, he can use it to provide the expenses of living in that manner which is considered honest and fitting. If anything remains over and above this, the holder is bound to devote the superfluities of this benefice to the poor or to other pious uses" (p. 71).

"Benefices are collative, or patronal, or elective. A collative benefice is one that is conferred at the absolute and free will of the prelate. A patronal benefice is one that is conferred by the prelate on the presentation of the patron. An elective benefice is one requiring free election, on the part of those who possess the right to elect, and also confirmation on the part of the prelate" (p. 71).

"The Pope, *de iure communi,* has the fulness of power to collate any and every benefice throughout the Church; for he is the supreme administrator of the goods offered to God, and all laws regulating benefices, even those recognizing the rights and privileges of benefactors, receive their force from him and are to be understood as being liable to suspension should he consider that the common good of the Church so demands. But the Roman Pontiffs are otherwise not wont to use the *summum ius,* except in cases where it may be necessary to preserve or to enforce a right inherent, *de iure communi,* in the Primacy; for they are not unmindful that the exercise of the *summum ius* is often *summa iniuria*" (p. 72).

"The Church requires certain things as regards holders of benefices.

(1) Legitimate birth. . . .

(2) The tonsure; for a laic is incapable of exercising the spiritual office which is attached to the benefice.

(3) The order that is required by law or custom for a particular benefice; but custom allows the order to be received within a year of obtaining the benefice.

(4) A fixed age, which varies according to the benefice . . . 14 (begun) for a simple benefice.

(5) Immunity from censures and occult irregularities.

(6) The knowledge necessary for the office.

(7) Probity of morals.

(8) The observances of approved local customs which sometimes demand other requirements.

"If any of the *requirenda* are wanting, the collation is thereby invalidated" (p. 73).

"He (the holder of a benefice) is bound under mortal sin to pay any pensions lawfully imposed upon his benefice. He is bound to spend upon pious works the superfluities of his benefice, after his honest sustenance is provided" (p. 76).

"He (the chaplain) is bound *per seipsum* to celebrate the masses if it be expressed in the foundation in so many words or equivalently. For the Council of Trent orders that what is constituted and laid down in the erection of the chaplaincy is *omnino* to be observed" (p. 149).

"The bishop or the heirs of the founder cannot add in any way to or change the founder's will" (p. 150).

"The Council of Trent orders that what is constituted and laid down in the erection of the chaplaincy is *omnino* to be observed" (p. 149).

"A chaplaincy is a certain sacred office to be performed, with a certain income attached as retribution . . . we have

(1) *Cappelania collativa,* which consists in an endowment, without reservation, for Masses daily at a particular altar; or for a certain number of Masses every year. This chaplaincy has to be erected by the bishop, and then becomes a benefice, and the collation belongs to the bishop. This kind of chaplaincy confers a title.

(2) *Capellania iuris patronatus* or *gentilitia* is like the former, but it is reserved to the patron to nominate the chaplain, while the institution belongs to the bishop. The founder cannot make any condition which will interfere with the bishop's right of institution" (pp. 150-151).

"Christian Doctrine is the Word of God revealed by Jesus Christ to the Church and received by her in all its fulness, guarded by her in all its integrity, and taught by

her through the bishops in communion with the Pope . . ." (p. 181).

"The First Provincial Council of Westminster decreed:

(1) 'In these schools (parochial) the Christian Doctrine, that is the Catechism duly approved, should be taught to all Catholic children . . .' " (p. 183).

THE CATHOLIC ENCYCLOPEDIA (New York, 1907).

BENEFICE (Lat. Beneficium, a benefit) (Cath. Encyc., vol. ii, p. 473).

"Popularly the term benefice is often understood to denote either certain property destined for the support of ministers of religion, or a spiritual office or function, such as the care of souls, but in the strict sense it signifies a right, i. e. the right given permanently by the Church to a cleric to receive ecclesiastical revenues on account of the performance of some spiritual service. Four characteristics are essential to every benefice: (a) the right to revenue from church property, the beneficed cleric being the usufructuary and not the proprietor of the source of his support; (b) a twofold perpetuity, objective and subjective, inasmuch as the source of income must be permanently established and at the same time the appointment to the benefice must be for life, and not subject to revocation, save for the causes and in the cases specified by law; (c) a formal decree of ecclesiastical authority giving to certain funds or property the character or title of a benefice; (d) an annexed office or spiritual function of some kind, such as the care of souls, the exercise of jurisdiction, the celebration of Mass or the recitation of the Divine Office. This last mentioned element is fundamental, since a benefice exists only for the sake of securing the performance of duties connected with the worship of God, and is based on the Scriptural teaching that they who serve the altar should live by the altar. In fact, as Innocent III declares, the sole purpose of the foundation of benefices was to enable

the church to have at her command clerics who might devote themselves freely to works of religion."

Division (p. 474)—"Benefices are divided into simple and double; major and minor; elective, presentative, and collative; residential and nonresidential; perpetual and manual; secular and regular. Simple benefices are those which involve only the duty of reciting the Divine Office or of celebrating Mass. Double benefices imply the care of souls or jurisdiction in the external forum or administrative functions, and, if they be episcopal or supra-episcopal in rank, are styled major benefices. A benefice is elective when the appointing authority may collate only after some electoral body has named the future incumbent; presentative when such nomination belongs to a patron; collative when the bishop or other superior appoints independently of any election or presentation. The distinction between residential and non-residential benefices is based upon the fact that in some cases the canons or articles of foundation impose the obligation of residence in the locality of the benefice while in other cases no such obligation is annexed. Manual benefices are not benefices in the strict sense, since their distinctive note is that appointments to them are revocable at the will of the collating authority. A legal presumption exists that all benefices are secular, but those which exist in churches or houses of religious orders or which by custom or by the will of the founder have been appropriated to religious are known as regular benefices. This last distinction has at times a special importance because of the rule requiring that secular benefices be conferred only on secular clerics, regular benefices only on regulars.

"Creation.—Benefices can be created only by ecclesiastical authority, since the right to revenue which they suppose is always necessarily connected with some spiritual function, and is therefore reckoned among the *jura spiritualia* controlled by the Church. The competent authority may be the pope or a bishop or one possessing

quasi-episcopal authority, it being always understood that the pope has exclusive control of all major benefices. A benefice must be erected in a church or at an altar, under the title of some saint or mystery, and with the annexed obligation of rendering some spiritual service. Since the idea of compensation is always implied, a sufficient endowment must in every case be guaranteed, the amount varying with the character of the benefice, the locality of the foundation, and the nature of the services which are to be rendered. In some countries, as in Austria, the consent of the civil authorities is a necessary preliminary to the creation of a benefice."

COLLATION (p. 475).—"The collation or granting of benefices may be ordinary or extraordinary, free or necessary. . . . A collation, whether made by the pope or by a bishop, is said to be free when it is not conditioned by any act of an elector or of a patron; necessary when it follows election or nomination by competent persons or presentation by patrons. In many countries, concordats have secured to the representatives of civil authority an important part in appointments to benefices. Thus in Bavaria the king nominates to all archiepiscopal and episcopal sees; and a similar right has been granted to the Emperor of Austria and to the King of Portugal; in Hanover the chapter, before proceeding to the election of a bishop, must allow the Government to cancel the names of those candidates whom it judges unacceptable. Secular intervention in the collation of minor benefices varies from the royal nomination of the King of Portugal to the governmental exequatur required by Italian law. *The interests of religion are safeguarded by the canonical requirement that in every case the candidate must be confirmed by ecclesiastical authority before he can lawfully begin his incumbency.*

"CONDITION OF COLLATION.—In order that benefices may the more effectually fulfill the purposes for which they were instituted, various laws have been enacted governing the act of collation. Whether the collation be free or necessary

it must always be gratuitous, to avoid simony; free, that is without coaction; unconditional; public, so that it may be readily proved; and granted within six months from the date of vacancy. Moreover no benefice can be conferred before it is vacant, nor can seculars receive the benefices of regulars, nor regulars those which are secular in character. Plurality of benefices also is forbidden. This last regulation was introduced very early in the history of benefices to assure the faithful execution of the trust attached to ecclesiastical foundations, as well as to guard against the evils which follow luxury; but in the course of time its effectiveness was considerably diminished by a distinction drawn between compatible and incompatible benefices. It was claimed that a benefice which does not require residence is perfectly compatible with one which does, and also that several simple benefices might very properly be held at the same time. This view held sway down to the time of the Council of Trent, which ordained that the possession of more than one benefice is lawful only when the first benefice obtained does not suffice for the support of the incumbent, and that in no case should both be residential. The Holy See alone can dispense from the observance of this law. The act of collation is further conditioned by canons requiring certain qualities in the appointee: (a) *The clerical state and celibacy.*—Tonsure is necessary for all benefices, and higher orders must be received by aspirants to important charges; thus cardinals are obliged to receive within the year the order corresponding to their rank in the sacred college; archbishops and bishops must have been subdeacons for at least six months; parish priests must receive the priesthood within a year. (b) *Age.* Before the Council of Trent a simple benefice could lawfully be conferred on a cleric as early as his seventh year, but since that council the recipient of a simple benefice must be in his fourteenth year, and for double benefices the age of twenty-four years completed is always required. A greater maturity is demanded for certain offices, e. g., thirty

years completed for the episcopate, and forty years for the post of canon penitentiary. (c) *Character.*—The appointee must be of legitimate birth and of good reputation, and free from censure and irregularity. (d) *Relative worthiness.*—In the case of a choice between several candidates for a bishopric or for a parish, the collator must appoint the most worthy, i. e., the one who possesses in the highest degree the qualities necessary for a successful discharge of the duties connected with the benefice in question. The same rule applies to prelacies with quasiepiscopal jurisdiction, to the canon theologian and to the canon penitentiary. As to other benefices authorities differ, the preferable opinion maintaining that in all cases the most worthy is to be chosen. (e) *Science.*—According to a law of Trent (Sess. VII, c. xiii, De ref.) no one can be collated to a benefice unless his fitness has been demonstrated in an examination conducted by the ordinary. In the case of parochial benefices, this examination must take the form of a concursus. (See Concursus.) For some appointments the possession of a degree in theology or in canon law is demanded, as evidence of requisite learning; a bishop must be a doctor or a licentiate in canon law or in theology, or have the public testimony of a university as to his fitness to teach others; an archdeacon also must be a doctor or a licentiate in canon law or in theology; and similar qualifications are demanded for other offices. The Holy See, is, at the present time, insisting that the law concerning degrees be faithfully observed. (f) *Extraordinary requirements.*—These may be imposed by the articles of foundation or by secular law. Founders of benefices are given a great deal of liberty in attaching conditions to the act of collation, provided that these conditions be approved by ecclesiastical authority. In consequence, it happens at times that only members of a certain family or citizens of some town or city are eligible, or even, in some few instances, persons of noble birth. . . ."

VACANCY (p. 476).—"The tenure of the incumbent of a benefice is perpetual, in the sense that it can be terminated

only by death or for causes specified in the law. It is provided in the law that in the event of certain acts vacancy shall occur *ipso facto;* as when the incumbent marries or attempts marriage, when he takes solemn vows in a religious order, when he violates the canon forbidding plurality, when he fails to receive within the prescribed time the necessary ordination, when he obtains episcopal consecration, when he is guilty of any crime to which penalty of deprivation is expressly attached. In other cases deprivation follows a judicial process, instituted in virtue of laws authorizing the bishop to punish certain offences in this manner. Moreover a cleric has the right to resign his benefice provided the resignation be offered freely and for just reasons, and be accepted by a competent superior, and he may also, with certain conditions, exchange benefices with another incumbent.

"Revenues.—The holder of a benefice is not the owner of the foundation from which he derives his support; he occupies in reference to it the position of a tutor or guardian who must defend its interests. His chief duty is to maintain it as a perpetual means of support for ministers of religion. Its fruits or revenues, however, belong to him, but with the obligation of devoting to pious causes, and especially to the relief of the poor, all that is not needed for his own support. Formerly, this superfluous revenue could not be disposed of by will, but a universal custom has long since authorized such testamentary disposal, provided it be made in favour of pious causes or of the poor. In fact, in most places on account of the difficulty of distinguishing a cleric's patrimonial property from his beneficiary revenue, the right is recognized to dispose freely by will of all property."

Beneficed Chaplains (Cath. Encyc., vol. iii, p. 580).

"There are a large number of clerics whose duty it is to say certain prescribed Masses or to procure their celebration, or to take part in various church services, such as choir service. Such persons receive their support from

a pious foundation erected for the purpose. Such chaplaincies are called either ecclesiastical or lay. They are ecclesiastical if the property donated by a founder has been formally erected into a benefice by the proper spiritual authority. If, however, the property designed for the purpose of procuring certain acts of Divine service has not received ecclesiastical erection it is called a lay chaplaincy. The latter is, strictly speaking, not a benefice in the canonical sense of the term. When a founder erects a chaplaincy, he is at liberty to define the duties of the person who is to enjoy the benefit of his foundation. Thus he may prescribe that a certain number of Masses be said by the chaplain; he may designate the intention for which they are to be offered, the altar at which they are to be said, and other like prescriptions. He can also determine whether the chaplain is to say the Masses personally or only be responsible for their due celebration. The Church has always been most liberal in confirming the conditions prescribed by such founders and insisting on their due observance. If the testator has left his goods to a layman, with the obligation of procuring the celebration of certain Masses by any priest whom he shall choose, such chaplaincy is called mercenary, and it does not partake of the nature of an ecclesiastical benefice, as the latter requires generally that the holder should be appointed for life. The controllers of such mercenary chaplaincies can of course be laymen, or even women or children. At times the name of lay chaplains is given to such persons. A chaplaincy is called collative if the founder bestows his goods for spiritual purposes in such a way that the bishop is to erect the foundation into a benefice, for no layman can erect a sacred edifice or institute a spiritual office without the episcopal authorization. Such benefices are called collative because the bishop collates or confers the right to hold them upon the acceptable candidate, even if such candidate has been presented or nominated by lay authority. To exclude the episcopal confirmation would be to make it impossible for the chaplaincy to be held as an ecclesiastical benefice.

Hereditary or family chaplancies are those to which, by the will of the founder, the holder of the benefice is to be nominated by the testator's heirs or assigns. *In such cases also the confirmation of the bishop is of absolute necessity.* If the chaplaincy be attached to a definite edifice or to an altar in that edifice, it may not by common law be removed to another place. Instances, however, are on record where the Holy See has sanctioned the removal of such chaplaincies from one castle of a noble family to another, where the request has been made by the heirs of the founders.

"REGULATIONS CONCERNING BENEFICED CHAPLAINS. When the founder of a chaplaincy has not expressly stipulated that the beneficiary is to celebrate personally the prescribed Masses, it is not requisite that the chaplain be in Sacred orders, as he can procure otherwise the celebration of the Masses. *If it be an ecclesiastical benefice, however, the incumbent must at least be a cleric.* When the founder explicitly stipulates that the chaplain is to be a priest, this condition must be adhered to. If, however, he says merely that the chaplain is personally to celebrate the stipulated Masses, then the benefice can be given to a simple cleric, provided he is of such age that he can receive the priesthood within a year. If the foundation requires that the chaplain take part in the Divine Office in a cathedral or collegiate church, then personal service is obligatory on the beneficiary, nor can he employ a substitute, if by obtaining the benefice he becomes a mansionary of that church. In cases where a daily Mass is one of the conditions of the foundation, it is generally held that the chaplain can occasionally intermit this duty for a proper cause. He can also, if hindered by sickness, omit the application of the daily Mass for a fortnight, without being obliged to secure the fulfilment of the foundation requirement by another priest. If the chaplain is obliged to offer his Mass for a definite intention specified by the founder, he may not receive an alms for another intention and satisfy both by the same

Mass. As to residence, the chaplain is only bound to observe it when local ecclesiastical regulations, or customs, or the will of the founder has imposed it as a duty. The bishop cannot impose on a chaplain any care of souls that will interfere with his peculiar obligations. The duration of the chaplain's office depends on whether his chaplaincy be lay or clerical; if lay, he may be arbitrarily removed by the one who has the right of appointment, unless the will of the founder be expressly to the contrary; if clerical, the chaplain, like all other holders of benefices, is presumably appointed for life, unless the laws of foundation provide otherwise."

CLERIC (Cath. Encyc., vol. iv., p. 49).

"Cleric, a person who has been legitimately received into the ranks of the clergy. By clergy in the strict sense is meant the entire ecclesiastical hierarchy. Consequently a cleric is one who belongs in some sense to the hierarchy. For this it is necessary that he have received at least the tonsure (see Tonsure). The clergy by Divine right form an order or state which is essentially distinct from that of the laity."

DISCIPLINE (Cath. Encyc., vol. v., p. 30).

"DISCIPLINE, ECCLESIASTICAL.—Etymologically the word *discipline* signifies the formation of one who places himself at school and under the direction of a master. All Christians are the disciples of Christ, desirous to form themselves at His school and to be guided by His teachings and precepts. He called Himself, and we, too, call Him, Our Master. Such, then, is evangelical discipline. However, in ecclesiastical language the word *discipline* has been invested with various meanings, which must here be enumerated and specified.

"I. MEANING OF DISCIPLINE.—All discipline may be considered first in its author, then in its subject, and finally in itself. In its author it is chiefly the method employed for the formation and adaptation of the precepts and directions to the end to be attained, which is the perfect conduct

of subjects; in this sense discipline is said to be severe or mild. In those who receive it discipline is the more or less perfect conformity of acts to the directions and formation received; it is in this sense that discipline may be said to flourish in a monastery. Or, again, it is the obligation of subjects to conform their acts to precepts and directions, and is thus defined by Cardinal Cavagnis: *Praxis factorum fidei consona*—'conduct conforming itself to faith' (Inst. jur. publ. eccl., Bk. IV, n. 147). More frequently, however, discipline is considered objectively, that is, as being the precepts and measures for the practical guidance of subjects. Thus understood ecclesiastical discipline is the aggregate of laws and directions given by the Church to the faithful for their conduct both private and public. This is discipline in its widest acceptation, and includes natural and Divine as well as positive laws, and faith, worship, and morals; in a word, all that affects the conduct of Christians. But if we eliminate laws merely formulated by the Church as the exponent of natural or Divine law, there remain the laws and directions laid down and formulated by ecclesiastical authority for the guidance of the faithful; this is the restricted and more usual acceptation of the word *discipline*. Nevertheless, it must be understood that this distinction, however justified, is not made for the purpose of separating ecclesiastical laws into two clearly divided categories in so far as practice is concerned; the Church does not always make known to what extent she speaks in the name of natural or of Divine law, and with this corresponds the observance of laws by her subjects.

"II. Object of Discipline.—Since ecclesiastical discipline should direct every Christian life, its object must differ according to the obligations incumbent on each individual. The first duty of a Christian is to believe; hence dogmatic discipline, by which the Church proposes what we should believe and so regulates our conduct that it shall not fail to assist our faith. Dogmatic discipline springs from the power of *magisterium*, i. e. the teaching office, in the

exercise of which power the Church can proceed only by declaration; therefore, it is ecclesiastical discipline only in a broad sense. The second duty of Christians is to observe the Commandments, hence moral discipline (*disciplina morum*). Strictly understood the latter does not depend much more upon the Church than does dogmatic discipline, as the natural law is anterior and superior to ecclesiastical law; however, the Church authoritatively proposes to us the moral law, she specifies and perfects it; hence it is that we generally call moral discipline whatsoever directs the Christian in those acts that have a moral value, including the observance of positive laws, both ecclesiastical and secular. Among the chief duties of a Christian the worship of God must be assigned a place apart. The rules to be observed in this worship, especially public worship, constitute liturgical discipline. This cannot be said to depend absolutely upon the Church, as it derives the essential part of the Holy Sacrifice and the sacraments from Jesus Christ; however, for the greater part, liturgical discipline has been regulated by the Church and includes the rites of the Holy Sacrifice, the administration of the sacraments and of the sacramentals, and other ceremonies.

"There still remain the obligations incumbent on the faithful considered individually, either on the members of different groups or classes of ecclesiastical society, or, finally, on those who are to any extent whatever depositaries of a portion of the authority. This is discipline properly so called, exterior discipline, established by the free legislation of the Church (not, of course, in a way absolutely independent of natural or Divine law, but outside of, yet akin to this law) for the good government of society and the sanctification of individuals. On individuals it imposes common precepts (the Commandments of the Church); then it states their mutual obligations, in conjugal society by matrimonial discipline, in larger societies by determining relations with ecclesiastical superiors, parish priests, bishops, etc. Special classes also have their own particu-

lar discipline, there being clerical discipline for the clergy and religious or monastic discipline for the religious. The government of Christian society is in the hands of prelates and superiors who are subject to a special discipline either for the conditions of their recruitment, for the determining of their privileges and duties, or for the manner in which they should fulfil their functions. We may include here the rules for the administration of temporal goods. Finally, any authority from which emanate orders or prohibitions should have power to ratify the same by penal measures applicable to all transgressors; hence, another object of discipline is the imposing and inflicting of disciplinary sanctions. It must be noted, however, that the object of these measures is to ensure observance or to chastise infractions of the natural and Divine as well as of ecclesiastical laws.

"III. Disciplinary Power of the Church—It is evident, therefore, that the disciplinary power of the Church is a phase, a practical application, of its power of jurisdiction, and includes the various forms of the latter, namely, legislative, administrative, judicial, and coercive power. As for the power of order (*potestas ordinis*), it is the basis of liturgical discipline by which its exercise is regulated. For the proof that the Church is a society and that, as such, it necessarily has the power of jurisdiction which it derives from Divine institution through the Apostolic succession, see Church. Disciplinary power is proved by the very fact of its exercise; it is an organic necessity in every society whose members it guides to their end by providing them with rules of action. Historically it can be shown that a disciplinary power has been exercised by the Church uninterruptedly, first by the Apostles and then by their successors. The Apostles in the first council at Jerusalem formulated rules for the conduct of the faithful (Acts, xv). St. Paul gave moral advice to the Christians of Corinth on virginity, marriage, and the agape (I Cor., vii, xi). The Pastoral Epistles of St. Paul are a veritable code of clerical discipline. The Church, moreover, has never ceased to rep-

resent herself as charged by Christ with the guidance of mankind in the way of eternal salvation. The Council of Trent expressly affirms the disciplinary power of the Church in all that concerns liturgical discipline and Divine worship (Sess. XXI, c. ii): 'In the administration of the sacraments, the substance of the latter remaining intact, the Church has always had power to establish or to modify whatever she considered most expedient for the utility of those who receive them, or best calculated to ensure respect for the sacraments themselves according to the various circumstances of time and place.' In fact, we need only to recall the numerous laws enacted by the Church in the course of centuries for the maintenance, development, or restoration of the moral and spiritual life of Christians.

"IV. Mutability of Discipline.—That ecclesiastical discipline should be subject to change is natural since it was made for men and by men. To claim that it is immutable would render the attainment of its end utterly impossible, since, in order to form and direct Christians, it must adapt itself to the variable circumstances of time and place, conditions of life, customs of peoples and races, being, in a certain sense, like St. Paul, all things to all men. Nevertheless, neither the actual changes nor the possibility of further alteration must be exaggerated. There is no change in those disciplinary measures through which the Church sets before the faithful and confirms the natural and the Divine law, nor in those strictly disciplinary regulations that are closely related to the natural or Divine law. Other disciplinary rules may and must be modified in proportion as they seem less efficacious for the social or individual welfare. Thomassin aptly says [Vetus et nova Ecclesiae disciplina (ed. Lyons, 1706), preface, n. xvii]: 'Whoever has the least idea of ecclesiastical laws, those that concern government as well as those that regulate morals, knows well that they are of two kinds. Some represent immutable rules of eternal truth, itself the fundamental law, the source and origin of these laws, from the

observance of which there is no dispensation, against which no prescription obtains, and which are not modified either by diversity of custom or vicissitudes of time. Other ecclesiastical rules and customs are by nature temporary, indifferent in themselves, more or less authoritative, useful, or necessary according to circumstances of time and place, having been established only to facilitate the observance of the fundamental and eternal law.' As to the variations of discipline concerning these secondary laws, the same author describes them in these terms (loc. cit., n. xv): 'While the Faith of the Church remains the same in all ages, it is not so with her discipline. This changes with time, grows old with the years, is rejuvenated, is subject to growth and decay. Though in its early days admirably vigorous, with time defects crept in. Later it overcame these defects and although along some lines its usefulness increased, in other ways its first splendour waned. That in its old age it languishes is evident from the leniency and indulgence which now seem absolutely necessary. However, all things fairly considered, it will appear that old age and youth have each their defects and good qualities.' Were it necessary to exemplify the mutability of ecclesiastical discipline it would be perplexing indeed to make a choice. The ancient catechumenate exists only in a few rites; the Latin Church no longer gives Communion to the laity under two kinds; the discipline relating to penance and indulgences has undergone a profound evolution; matrimonial law is still subject to modifications; fasting is not what it formerly was; the use of censures in penal law is but the shadow of what it was in the Middle Ages. Many other examples will easily occur to the mind of the well-informed reader."

Doctrine (Cath. Encyc., vol. v., p. 75).

Doctrine, Christian.—"Taken in the sense of 'the act of teaching' and 'the knowledge imparted by teaching', this term is synonymous with Catechesis and Catechism" (p. 75).

"The subjects to be treated of are laid down by Pius X: 'As the things divinely revealed are so many and so various that it is no easy task either to acquire a knowledge of them, or, having acquired that knowledge, to retain them in the memory, . . . our predecessors have very wisely reduced this whole force and scheme of saving doctrine to these four distinct heads: the Apostles' Creed, the Sacraments; the Ten Commandments; and the Lord's Prayer. In the doctrine of the Creed are contained all things which are to be held according to the discipline of the Christian Faith, whether they regard the knowledge of God, or the creation and government of the world, or the redemption of the human race, or the rewards of the good and the punishments of the wicked. The doctrine of the Seven Sacraments comprehends the signs and as it were the instruments for obtaining divine grace. In the Decalogue is laid down whatever has reference to the Law, "the end" whereof "is charity". Finally, in the Lord's Prayer is contained whatever can be desired, hoped, or salutarily prayed for [illegible] men. It follows that these four commonplaces, as it were [illegible], of Sacred Scripture being explained, there can scarcely be wanting anything to be learned by a Christian man' (ib., xii). It must be borne in mind that catechetical instruction should be elementary; but this of course is a relative term, according as the pupil is an adult or a child. This difference has been dealt with above in speaking of the persons concerned in catechizing. It may be pointed out here, however, that elementary knowledge is not the same as partial knowledge. Even young children should be taught something of each of the four divisions mentioned above, viz., that they have to believe in God and to do God's will, and to obtain His grace by means of prayer and the sacraments. Further instruction will consist in developing each of these heads. Besides what is ordinarily understood by Christian doctrine, catechizing would treat of Christian history and Christian worship. Christian history will include the story of the Old Testament, the New Testament and the

Church. Christian worship will include the Church's calendar (the feasts and fasts) and her services and devotions. These three—doctrine, history, and worship—are not altogether distinct, and may often be best taught together. For example, the second article of the Creed should be taught in such a way as to bring out the doctrine of the Incarnation, the beautiful story of Christ's birth and childhood, and the meaning and the services of Advent and Christmas. The Bible history and the history of the Church will afford countless instances bearing on the various doctrines and heresies of the doctrinal part of the catechism, and the virtues and contrary vices of the practical part" (pp. 83-4).

ORDERS, HOLY (Cath. Encyc., vol. xi., p. 279).

"Order is the appropriate disposition of things equal and unequal, by giving each its proper place (St. Aug., 'De civ. Dei,' XIX, xiii). Order primarily means a relation. It is used to designate that on which the relation is founded and thus generally means rank (St. Thom., 'Suppl.', Q. xxxiv, a. 2, ad 4um). In this sense it was applied to clergy and laity (St. Jer., 'In Isaiam', XIX, 18; St. Greg. the Great, 'Moral.', XXXII, xx). The meaning was restricted later to the hierarchy as a whole or to the various ranks of the clergy. Tertullian and some early writers had already used the word in that sense, but generally with a qualifying adjective (Tert., 'De exhort. cast.', vii, ordo sacerdotalis, ordo ecclesiasticus; St. Greg. of Tours, 'Vit. patr.', X, i, ordo clericorum). Order is used to signify not only the particular rank or general status of the clergy, but also the outward action by which they are raised to that status, and thus stands for ordination. It also indicates what differentiates laity from clergy or the various ranks of the clergy, and thus means spiritual power. The Sacrament of Order is the sacrament by which grace and spiritual power for the discharge of ecclesiastical offices are conferred."

TONSURE (Cath. Encyc., vol. xiv., p. 779).

"Tonsure (Lat. *tondere*, 'to shear'), a sacred rite instituted by the Church by which a baptized and confirmed

Christian is received into the clerical order by the shearing of his hair and the investment with the surplice. The person thus tonsured becomes a partaker of the common privileges and obligations of the clerical state and is prepared for the reception of orders. The tonsure itself is not an ordination properly so called, nor a true order. It is rather a simple ascription of a person to the Divine service in such things as are common to all clerics. Historically, the tonsure was not in use in the primitive Church during the age of persecution. Even later, St. Jerome (in Ezech., xliv) disapproves of clerics shaving their heads. Indeed, among the Greeks and Romans such a custom was a badge of slavery. On this very account, the shaving of the head was adopted by the monks. Towards the end of the fifth, or beginning of the sixth century, the custom passed over to the secular clergy.

"As a sacred rite, the tonsure was originally joined to the first ordination received, as in the Greek Church it still is to the order of lector. In the Latin Church it began as a separate ceremony about the end of the seventh century, when parents offered their young sons to the service of God. Tonsure is to be given by a candidate's ordinary, though mitred abbots can bestow it on their own subjects. No special age for its reception is prescribed, but the recipient must have learnt the rudiments of the Faith and be able to read and write. The ceremony may be performed at any time or place. As to the monastic tonsure, some writers have distinguished three kinds: (1) the Roman, or that of St. Peter, when all the head is shaved except a circle of hair; (2) the Eastern, or St. Paul's, when the entire head is denuded of hair; (3) the Celtic, or St. John's, when only a crescent of hair is shaved from the front of the head. In Britain, the Saxon opponents of the Celtic tonsure called it the tonsure of Simon Magus. According to canon law, all clerics are bound to wear the tonsure under certain penalties. But on this subject, Taunton (loc. cit. inf.) says: 'In English-speaking countries, from a cus-

tom arising in the days of persecution and having a prescription of over three centuries, the shaving of the head, the priestly crown, seems, with the tacit consent of the Holy See, to have passed out of use. No provincial or national council has ordered it, even when treating of clerical dress; and the Holy See has not inserted the law when correcting the decrees of those councils'."

THE NEW SCHAFF-HERZOG ENCYCLOPEDIA OF RELIGIOUS KNOWLEDGE

Article on "BENEFICE", vol. ii, (1908), p. 51, by E. Friedberg, Professor of Ecclesiastical Law, University of Leipsic.

"The conditions of a proper canonical appointment to a benefice are several: (1) A vacancy must exist, and that a real one, not such as would be caused by the forcible expulsion of the incumbent. Thus expectancies are forbidden; . . . (2) The person appointed must be a *persona regularis* and *idonea*, i. e., properly qualified to hold the benefice. Under this head comes the possession of the qualifications necessary for ordination, though where it is required, a delay of a year or other specified time may be granted. Intellectual qualifications are included, to be determined, according to the Council of Trent, by examination; and the law has sometimes required native birth also, other things being equal. (3) The appointment must be made within the legal time, the rule being that no benefice shall remain vacant more than six months; otherwise, the right of presentation is lost. . . . (4) There must be no simony involved. (5) What are called subreption and obreption are also forbidden. . . . (6) The proper forms, both in the designation and in the collation, must be observed. . . ."

Article on "ROMAN CATHOLICS", vol. x (1911), p. 70, by Charles H. McCarthy, Professor, Catholic University, Washington, D. C.

"DOCTRINE: The Roman Catholic system of Doctrine is contained* in the ecumenical creeds (the Apostles', the

* It will be noted that the above was published before the promulgation of the Codex Juris Canonici of 1917.

Nicene with the *Filioque,* and the Athanasian . . .), in the dogmatic decisions of the ecumenical councils (twenty in number, from 325 to 1870), and in *ex cathedra* deliverances of the popes. The principal authorities are the canons and decrees of the council of Trent . . ., the Profession of the Tridentine Faith, commonly called the 'Creed of Pius IV.', . . . The Roman Catechism (1566), the decree of the immaculate conception (1854), and the Vatican decrees on the Catholic faith and the infallibility of the pope (1870). A thesaurus of decisions on all sorts of doctrinal and disciplinary questions is afforded in the books of the canon law, beginning with the 'Concordance' of Evatian (c. 1150), but this has never been pronounced as a final authority. The best summary of the leading articles of the Roman faith is contained in the Creed of Pius IV., which is binding upon all priests and public teachers, and which must be confessed by all converts. It consists of the Nicene Creed and eleven articles. To these must now be added the two additional Vatican dogmas of the Immaculate Conception . . . of the Virgin Mary and the Infallibility of the Pope. . . . The Roman Catholic system of doctrine was prepared as to matter by the Fathers (especially Irenaeus, Cyprian, Augustine, Jerome, Leo I., Gregory I. . . .), logically analyzed, defined and defended by the mediaeval schoolmen (Anselm, Alexander Hales, Peter the Lombard, Thomas Aquinas, Duns Scotus . . .), and vindicated, in opposition to Protestantism, by Bellarmin, Bossuet, and Möhler . . . and completed in the Vatican dogma of papal infallibility, which excludes all possibility of doctrinal reformation."

"AN OUTLINE OF CHRISTIAN THEOLOGY", BY W. N. CLARKE, D.D., PROFESSOR OF CHRISTIAN THEOLOGY IN COLGATE UNIVERSITY (New York, 1914).

"The main work of a department of Christian theology is to present the Christian doctrine, grounded in the Scriptures, in the form to which historical development has brought it, and to study the facts of religion in the light of the Christian revelation. Among the many views that may be taken of God and man, good and evil, duty, life and

destiny, there is a Christian view, obtained mainly by means of Christ; and Christian Theology aims to present that view in systematic order and proportion. Its great themes are, God as Christ has made him known, and man, sin, salvation, duty, life, and destiny, in the light of Christ's revelation" (p. 6).

ALCUBILLA, DICCIONARIO DE LA ADMINISTRACIÓN ESPAÑOLA, (Fifth edition, Madrid, 1892), TOMO 3, P. 4.

Spanish.	English.
"Tuvo, por tanto, el Concilio de Trento una immensa importancia en la época en que se celebró, y la tiene hoy, y la tendrá siempre en los Estados católicos, y más en España, donde se mandó guardar y cumplir por la ley 13, tit. I, libro I, de la Nov. Recop., cuyo imperio ha sido confirmado por el art. 75 del Código Civil."	The Council of Trent, therefore, had an immense importance at the time it took place, and so it has today, and so will it always have in the Catholic States, and more so in Spain, where it was ordered followed and complied with by law 13, tit. I, Book I, of the Nov. Rec., whose force has been confirmed by Art. 75 of the Civil Code.

3 DIC. ENCI. HISPANO-AMERICANO, (Barcelona, 1888), P. 464.

Spanish.	English.
"El beneficio eclesiástico sólo permite á los clérigos el derecho de usar de las cosas de la Iglesia, puesto que los cánones no conceden sino facultad de tomar de la renta eclesiástica *la porción indispensable para satisfacer sobriamente las necesidades materiales de la vida,* debiendo emplear el resto en obras de caridad."	An ecclesiastical benefit allows the clergymen only the right to use the properties of the church, inasmuch as the canons do not allow but the taking from the ecclesiastical rent *the portion indispensable to satisfy in a moderate manner the material necessities of life,* with the obligation of applying the remainder in charitable works.

4 DIC. ENCI. HISPANO-AMERICANO, (Barcelona, 1888), P. 530.

Spanish.

"Claro es, que si las condiciones impuestas por el fundador son contrarias al Derecho, sólo valdrán cuando la autoridad eclesiástica las haya concordado y admitido, y siempre que no se opongan á la naturaleza de la capellanía ó del derecho de patronato que puede irle unido." (Capitulos II, Tit. V, 32 Tit. 28, y 16 Tit. 39, Libro III de los Decretales.)

English.

It is clear that if the conditions imposed by the founder are contrary to law, they will be valid only in so far as the ecclesiastical authorities may have approved and admitted them, and provided further that they are not against the nature of chaplaincies or the right of patronage attached to it. (Chap. ii, Tit. V, 32 Tit. 28, and 16 Tit. 39, Book III of the *Decretales*.)

VI.

TESTIMONY OF PLAINTIFF (R. 149-152).

RAUL ROGERIO GONZALEZ, who will be 14 years of age on September 16th of this year, residing in Baliwag, Bulacan, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GIBBS: What is your father's name?

A. Angel Gonzalez.

Q. And your mother's name?

A. Adelaida Gonzalez.

Q. Do you go to school?

A. Yes, sir.

Q. In what grade are you?

A. In the sixth grade.

Q. What subjects do you study in the sixth grade?

A. Arithmetic, geography, spelling, phonics, conversation, English and good manners.

Q. Who is your teacher in the sixth grade?

A. Mr. Claudio Borja.

Q. Do you obey your parents?

MR. FERIA: The question is leading.

COURT: Objection sustained.

MR. GIBBS: Exception.

Q. State whether or not you obey your parents.

A. I do.

Q. What do you want to be, as regards your future career?

A. Yes, sir.

Q. What do you want to be?

A. I want to be an archbishop.

Q. Do you want to be a priest before you become an archbishop?

A. Yes, sir, I want to be a priest first.

Q. Please state whether or not you want to study so as to qualify as a priest.

A. Yes, sir.

Q. Do you know whether your parents will be able to support you while preparing for the priesthood?

MR. FERIA: Objected to, witness is incompetent to testify about that.

COURT: Objection overruled.

MR. FERIA: Exception.

A. My parents are poor.

MR. GIBBS: That is all.

CROSS-EXAMINATION OF PLAINTIFF BY DEFENDANT'S COUNSEL.

MR. FERIA: Is it not true that you would prefer to get married when you grow up?

A. No, sir.

Q. *Do you know what a priest is?*

A. *No, sir.*

Q. Is it not true that you do not know what property your parents have?

A. They have nothing that I know of.

Q. Is it not true that your parents have property of which you are not aware?

A. I think that they have none.

Q. Did you ask your parents about what property they have?

A. No, sir.

Q. Why do you say that they have no property?

A. That is what I know and also because they have nothing with which to spend for me.

Q. Why do you know that they have nothing to spend for you?

A. Because they can hardly buy my clothing. The clothing I have was purchased by my aunt.

Q. Is it not true that your parents did not buy clothing for you because your aunt bought it for you?

A. They did not buy any clothing for me because they had no money.

Q. Why do you know that they have no money?

A. Because they cannot buy what I need most.

Q. What is it that you need most which they cannot buy?
A. Toys, for example, and the things I need in school.
Q. Did you ask your parents to buy you toys?
A. Yes, sir.
Q. When?
A. Long ago.
Q. Two years ago?
A. Not quite.
Q. More than a year ago?
A. Yes, sir.
Q. What toys did you ask your parents to buy for you?
MR. GIBB: That is immaterial.
COURT: Objection sustained.
MR. FERIA: Exception.
Q. Is it not true that when you asked your parents to buy you toys, your parents did not give you any because you did not obey them sometimes?
A. No, sir, I always obeyed them.
Q. Is it not true that you were spanked by them?
A. Yes, sir.
Q. Is it not true that your parents often spanked you?
A. No, sir, very rarely.
Q. Is it not true that you were spanked by your parents at least once a month?
A. Sometimes not even once a month.
Q. But sometimes more than once a month?
A. No, sir.
Q. *Do you know what training is needed to be a priest?*
A. *Yes, sir.*
Q. *What?*
A. *To say mass.*
MR. FERIA: That is all.
RE-DIRECT EXAMINATION BY PLAINTIFF'S COUNSEL:
MR. GIBBS: Do you know what subjects you must study in order to prepare for the chaplaincy?
MR. FERIA: I object to the question because it is based on facts not established.

COURT: Objection overruled.
A. *I know of only one.*
Q. What is it?
A. *Theology.*
MR. GIBBS: That is all.
FURTHER CROSS-EXAMINATION BY
MR. FERIA: *Do you know what theology is?*
A. *Not until now.*
Q. *Is theology a man, a person?*
A. *I do not know.*
Q. *Is theology not money?*
A. *No, sir.*
Q. *What is it?*
A. *I do not know what it is.*
MR. FERIA: That is all."

SUPREME COURT OF THE UNITED STATES.

No. 6.—October Term, 1929.

Raul Rogerio Gonzalez, etc., Petitioner, *vs.* The Roman Catholic Archbishop of Manila.	On Certiorari to the Supreme Court of the Philippine Islands.

[October 14, 1929.]

Mr. Justice Brandeis delivered the opinion of the Court.

This case is here on certiorari to the Supreme Court of the Philippine Islands. 278 U. S. 588. The subject matter is a collative chaplaincy in the Roman Catholic Archdiocese of Manila, which has been vacant since December 1910[1]. The main questions for decision are whether the petitioner is legally entitled to be appointed the chaplain and whether he shall recover the surplus income accrued during the vacancy.

Raul Rogerio Gonzalez, by his guardian *ad litem*, brought the suit against the Archbishop in the Court of First Instance of Manila, on August 5, 1924. He prayed for judgment declaring

[1]A chaplaincy in the Roman Catholic Church is an institution founded by an individual for the purpose of celebrating or causing to be celebrated annually a certain number of masses conforming to the will of the founder. Chaplaincies are commonly divided into two classes—lay and ecclesiastical. A laical or mercenary chaplaincy is one instituted without the intervention of ecclesiastical authority; does not require a title in order to be ordained; and is not subject to ecclesiastical authority. The ecclesiastical or collative chaplaincy, although also founded by an individual, is one erected into a benefice by the proper spiritual authority; requires a title of ordination; and is thus subject to ecclesiastical control. When the foundation of an ecclesiastical or collative chaplaincy calls for relatives of the founder to enjoy the chaplaincy, it is called *colativa familiar*. When individuals of a certain family are not called to the possession but the patron is authorized to nominate, then the chaplaincy is called *colativa simple* or *gentilicia*. But whether the chaplaincy is *colativa familiar* or *colativa simple*, intervention of the proper spiritual authority to appoint and ordain is essential. Alcubilla, Diccionario de la Administration Española, (5 Ed.) Vol. II, p. 259; The Catholic Encyclopedia, Vol. III, p. 580.

the petitioner the lawful heir to the chaplaincy and its income; establishing the right of the petitioner and his successors to be appointed to and receive the income of the chaplaincy during their infancy whenever it may be vacant and, pending such appointment, to receive the income for their maintenance and support; declaring the trust character of the property and ordering it to be so recorded; directing the Archbishop to appoint the petitioner chaplain and to account to him for the income of the property from 1910 on; and directing the defendant to pay the petitioner 1,000 pesos a month pending the final determination of the case. The trial court directed the Archbishop to appoint the petitioner chaplain; and ordered payment to him of 173,725 pesos ($86,862.50), that sum being the aggregate net income of the chaplaincy during the vacancy, less the expense of having the prescribed masses celebrated in each year. It reserved to the petitioner any legal right he may have to proceed in the proper court for cancellation of the certificate of registration of the property in the name of the Archbishop. The Supreme Court of the Philippine Islands reversed the judgment on February 4, 1928, and absolved the Archbishop from the complaint, "without prejudice to the right of proper persons in interest to proceed for independent relief," in respect to the income accrued during the vacancy, or in respect to the reformation of the certificate of registration so as to show the fiduciary character of the title. — Phil. —. As the amount in controversy exceeds $25,000, this Court has jurisdiction on certiorari, Act of February 13, 1925, c. 229, § 7, 43 Stat. 936, 940.

The chaplaincy was founded in 1820, under the will of Doña Petronila de Guzman. By it, she requested "the Father chaplain to celebrate sixty masses annually" in behalf of the souls of her parents, brothers, sisters and herself. The deed of foundation, which was executed by the testamentary executor of Doña Petronila, provided that "said property is segregated from temporal properties and transferred to the spiritual properties of this Archbishopric, without its being possible to alienate or convert the property as such into any other estate for any cause, even though it be of a more pious character, . . so that by virtue of this Deed of Foundation canonical collation may be conferred on the said appointed chaplain." By appropriate proceedings an ecclesiastical decree approved "the foundation of the chaplaincy with all

the circumstances and conditions provided for in said clause (of the will) and in the deed of foundation, as well as the imposition (charge) of seventeen hundred pesos against said building, converting said sum into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction."

The will provided that the foundation should effect the immediate appointment as chaplain of D. Esteban de Guzman, the great-grandson of the testatrix; and "in his default, the nearest relative, and in default of the latter, a collegian (colegial) of San Juan de Letran, who should be an orphan *mestizo*, native of this said town." It named the president of that college as the patron of the chaplaincy. Esteban was appointed chaplain in 1820. From time to time thereafter four other descendants of the testatrix were successively appointed. The latest of these renounced the chaplaincy in December, 1910; married soon thereafter; and in 1912 became the father of the petitioner, Raul Rogerio Gonzalez, who is a legitimate son of the fifth chaplain and claims to be the nearest relative in descent from the first chaplain and the foundress.

Raul was presented to the Archbishop for appointment in 1922. The Archbishop refused to appoint him, on the ground that he did not then have "the qualifications required for chaplain of the said chaplaincy." He added: "The grounds of my conclusion are the very canons of the new Code of Canon Law. Among others, I can mention canon 1442 which says: 'Simple chaplaincies or benefices are conferred upon clergymen of the secular clergy,' in connection with canon 108, paragraph 1, 'Clergymen are those already initiated in the first tonsure' and canon 976, paragraph 1, 'No one can be promoted to first tonsure before he has begun the course in theology.' In view of the Canon as above mentioned, and other reasons which may be adduced, I believe that the boy, Raul Gonzalez, is not legally (ecclesiastically speaking) capacitated to the enjoyment of a chaplaincy."

Ever since the Council of Trent (1545-1563), it has been the law of the church that no one can be appointed to a collative chaplaincy before his fourteenth year. When Raul was presented for appointment, he was in his tenth year. He was less than twelve when this suit was begun. He was fourteen when the trial court entered its judgment. It is also urged on behalf of the Archbishop that at no time since that Council could one be lawfully appointed who lacked elementary knowledge of Christian Doctrine.

The new Codex Juris Canonici, which was adopted in Rome in 1917 and was promulgated by the Church to become effective in 1918, provides that no one shall be appointed to a collative chaplaincy who is not a cleric, Can. 1442. It requires students for the priesthood to attend a seminary; and prescribes their studies, Can. 1354, 1364. It provides that in order to be a cleric one must have had "prima tonsura", Can. 108, par. 1; that in order to have "prima tonsura" one must have begun the study of theology, Can. 976, par. 1; and that in order to study theology one must be a "bachiller", that is, must have obtained the first degree in the sciences and liberal arts, Can. 1365. It also provides that no one may validly receive ordination unless in the opinion of the ordinary he has the necessary qualifications, Can. 968, par. 1, 1464. Petitioner concedes that the chaplaincy here involved is a collative one; and that Raul lacked, at the time of his presentment and of the commencement of the suit, the age qualification required by the Canon Law in force when the chaplaincy was founded.[2] It is also conceded that he lacked, then, and at the time of the entry of the judgment, other qualifications of a candidate for a collative chaplaincy essential, if the new Codex was applicable.

Raul's contention, in effect, is that the nearest male relative in descent from the foundress and the first chaplain, willing to be appointed chaplain, is entitled to enjoy the revenues of the foundation, subject only to the duty of saying himself the sixty masses in each year, if he is qualified so to do, or of causing them to be said by a qualified priest and paying the customary charge therefor out of the income. He claims that the provisions of the new Codex are not applicable and that his rights are to be determined by the Canon Law in force at the time the chaplaincy was founded; and that the judgment of the trial court should be reinstated, because he possessed at the time of the entry of the judgment all the qualifications required by the Canon Law in force in 1820. Raul argues that contemporaneous construction and long usage have removed any doubt as to what these qualifications were; that when

[2]In order to overcome this obstacle, petitioner filed an amended complaint in the trial court, without objection, when he was in his fourteenth year. The Supreme Court assumed "for the purposes of this decision that the immaturity of the plaintiff in point of age is not a fatal obstacle to the maintenance of the action."

the foundation was established, and for a long time thereafter, the ecclesiastical character of the incumbent was a minor consideration; that this is shown by the administration of this chaplaincy; and that his own ecclesiastical qualifications, at the time of the entry of the judgment in the trial court, were not inferior to those of the prior incumbents. He asserts that, although chaplaincies were disamortized in Spain prior to 1867, Alcubilla, Diccionario, Vol. II, p. 118, they had in the Philippines remained undisturbed by any legislation of Spain; and that the rights of the church were preserved by Article VIII of the Treaty of Paris. 30 Stat. 1754, 1758. *Ponce* v. *Roman Catholic Church*, 210 U. S. 296, 315-322. He contends that to deprive him of his alleged right to the chaplaincy because of a change made in 1918 in the Canon Law would violate the Constitution of the United States, the Treaty with Spain of 1898, and the Organic Act of the Philippine Islands.

The trial court rested its judgment for Raul largely on the ground that he possessed, at the time of its entry, the qualifications required by the Canon Law in force when the chaplaincy was founded; and that, hence, he was entitled both to be appointed chaplain and to recover the income accrued during the vacancy, even though he did not possess the qualifications prescribed by the new Codex then otherwise in force. The Supreme Court held that to give effect to the provisions of the new Codex would not impair the obligation of the contract made in 1820, as it was an implied term of the deed of foundation that the qualifications of a chaplain should be such as the church authorities might prescribe from time to time; and that, since Raul confessedly did not possess the qualifications prescribed by the new Codex which had been promulgated before he was presented, he could not be appointed.

First. The Archbishop interposes here, as he did below, an objection to the jurisdiction of the Philippine courts. He insists that, since the chaplaincy is confessedly a collative one, its property became spiritual property of a perpetual character subject to the jurisdiction of the ecclesiastical forum; and that thereby every controversy concerning either the right to appointment or the right to the income was removed from the jurisdiction of secular courts. The objection is not sound. The courts have jurisdiction of the parties. For the Archbishop is a juristic person amenable to the Philippine courts for the enforcement of any legal

right; and the petitioner asserts such a right. There is jurisdiction of the subject matter. For the petitioner's claim is, in substance, that he is entitled to the relief sought as the beneficiary of a trust.

The fact that the property of the chaplaincy was transferred to the spiritual properties of the Archbishopric affects not the jurisdiction of the court, but the terms of the trust. *Watson* v. *Jones*, 13 Wall. 679, 714, 729. The Archbishop's claim in this respect is that by an implied term of the gift, the property, which was to be held by the church, should be administered in such manner and by such persons as may be prescribed by the church from time to time. Among the church's laws which are thus claimed to be applicable are those creating tribunals for the determination of ecclesiastical controversies. Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.[3] Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations.[4]

Second. The Archbishop contended that Raul lacked even the minimum of training and knowledge of Christian Doctrine made indispensable by the Canon Law in force in 1820; that his confessed lack of the essential age at the time of the presentment and also at the time of the institution of the suit were insurmountable obstacles to the granting of the prayer for appointment to the chaplaincy; and, moreover, that the failure to take an appeal to the Pope from the decision of the Archbishop, as provided by the

[3]Watson *v.* Jones, 13 Wall. 679, 727, 733; Shepard *v.* Barkley, 247 U. S. 1; s. c. Barkley *v.* Hayes, 208 Fed. 319, 327, aff'd *sub. nom.* Duvall *v.* Synod of Kansas, 222 Fed. 669; Brundage *v.* Deardorf, 92 Fed. 214, 228; Connitt *v.* Reformed Protestant Dutch Church, 54 N. Y. 551, 562.

[4]Commonwealth *v.* Union League, 135 Pa. 301, 327; Engel *v.* Walsh, 258 Ill. 98, 103; Richards *v.* Morison, 229 Mass. 458, 461; People ex rel. Johnson *v.* New York Produce Exchange, 149 N. Y. 401, 409-10, 413-14; Van Poucke *v.* Netherland St. Vincent De Paul Society, 63 Mich. 378.

Canon Law, precluded resort to legal proceedings. We have no occasion to consider the soundness of these contentions. For we are of opinion that the Canon Law in force at the time of the presentation governs, and the lack of the qualification prescribed by it is admitted. Neither the foundress, nor the church authorities, can have intended that the perpetual chaplaincy created in 1820 should, in respect to the qualifications of an incumbent, be forever administered according to the canons of the church which happened to be in force at that date. The parties to the foundation clearly contemplated that the Archbishop would, before ordination, exercise his judgment as to the fitness of the applicant; and they must have contemplated that, in the course of the centuries, the standard of fitness would be modified.

When the new Codex was promulgated in 1918 Raul was only six years old and had not yet been presented. If he had been presented, he obviously could not have been appointed. No right was then being enjoyed by him of which the promulgation of the new Codex deprived him. When he was presented later, he was ineligible under the then existing Canon Law. In concluding that Raul lacked the qualifications essential for a chaplain the Archbishop appears to have followed the controlling Canon Law. There is not even a suggestion that he exercised his authority arbitrarily.

Third. Raul urges that, even though he is not entitled to be appointed chaplain, he is entitled to recover the surplus net income earned during the vacancy. Indeed, it is the property rights involved that appear to be his main consideration. The value of the property in 1820 was about 1,700 pesos. The annual net income was then 180 pesos, a sum sufficient only to defray the annual expense of sixty masses. The annual net income has grown to about 12,000 pesos; and the annual expense of the sixty masses does not now exceed 300 pesos. In each year during the vacancy the masses have been duly celebrated. The surplus income accruing during the vacancy has been used by the Archbishop currently for pious purposes, namely, education By canon 1481 of the new Codex the surplus income of a chaplaincy, after deducting expenses of the acting chaplain, must one-half be added to the endowment or capital and one-half to the repair of the church, unless there is a custom of using the whole for some common good to the diocese. The use made of the surplus of this chaplaincy was in accordance

with what was claimed to be the long established custom of the Archdiocese. Both the custom and the specific application made of this surplus have been approved by the Holy See. The Supreme Court held that since Raul had sought the income only as an incident of the chaplaincy, he could not recover anything.

Raul's claim, which is made even in respect to income accrued prior to his birth, is rested upon some alleged right by inheritance, although his father is still living. The intention of the foundress, so far as expressed, was that the income should be applied to the celebration of masses and to the living of the chaplain, who should preferably be the nearest male relative in the line of descent from herself or the first chaplain. The claim that Raul individually is entitled as nearest relative to the surplus by inheritance is unsupported by anything in the deed of gift or the applicable law. Since Raul is not entitled to be appointed chaplain, he is not entitled to a living from the income of the chaplaincy.

Raul urges also an alleged right as representative of the heirs of the testatrix as a class. This suggestion was, we think, properly met by the ruling of the Supreme Court that the suit was not brought as a class suit. Whether the surplus income earned during the vacancy has been properly disposed of by the Archbishop and what disposition shall be made of it in the future we have no occasion to enquire. The entry of the judgment without prejudice "to the right of proper persons in interest to proceed for independent relief" leaves any existing right of that nature unaffected.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

END OF CASE